147 US 133

RECORD, CASE No. 13,581.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO., ~~378.~~ 54

JOHN FISHER AND WILLIAM LYLE, EXECUTORS, AND HESTER LYLE, SOLE DEVISEE, OF JOHN LYLE, DECEASED, APPELLANTS,

vs.

LORETTA SHROPSHIRE AND A. C. SHROPSHIRE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED JULY 12, 1889.

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from State court	3	1
Petition in equity	3	1
Exhibit A—Deed from Loretta Shropshire to German savings bank, May 1, 1877	12	4
B—Deed from Loretta Shropshire and husband to John Lyle, March 20, 1878	19	7
C—Deed from Jehu Rhinehart *et ux.* to John Lyle, March 28, 1878	21	8
E—Deed from Loretta Shropshire and husband to John Lyle, May 1, 1878	23	8
Affidavit for publication of original notice	25	9
Proof of publication of original notice	26	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 22, 1892.

	Original.	Print.
Petition for removal	28	11
Bond for removal	30	12
Order for removal	33	13
Fee bill	35	13
Clerk's certificate	36	13
Answer of defendant	38	14
Replication to answer	55	20
Motion to dismiss for non-joinder of parties	58	20
Order of November 13, 1885, overruling motion to dismiss	61	21
November 14, 1885, overruling motion to amend answer	63	21
January 5, 1886, granting leave to amend bill, &c.	65	22
Amendment to bill of complaint	67	22
Answer to amendment to bill	78	26
Replication to answer to amendment to bill	90	30
Order of May 13, 1886, granting leave to withdraw answer and file demurrer	93	31
Demurrer to amended bill	95	32
Order of May 18, 1886, overruling demurrer, &c.	101	34
May 21, 1886, granting leave to amend answer and bill	103	34
Second amendment to bill of complaint	105	34
Answer to second amendment to bill	111	36
Replication to answer to second amendment to bill	115	37
Interlocutory decree, November 11, 1886	118	38
Master's report of amount due	123	39
Complainants' motion to confirm master's report	132	44
Defendants' exceptions to master's report	134	45
Order of May 28, 1887, submitting cause	141*b*	48
Opinion of court	143	49
Master's certificate	150	51
Final decree	152	51
Defendants' application as to appeal bond	159	54
Petition for appeal	163	55
Order allowing appeal	170	58
Appeal bond	174	60
Original citation	178	61
Abstract of complainants' evidence	180	62
Deposition of W. H. Cole	180	62
Robert Ryan	184	64
A. C. Shropshire	188	66
Alex. Rhinehart	195	69
Loretta Shropshire	198	70
Exhibit C—Letter, Sept. 20, 1879, John Lyle to A. C. Shropshire	215	76
D—Letter, Oct. 7, 1880, John Lyle to A. C. Shropshire	216	77
E—Tax receipt for taxes, 1878	216	77
F—Lease, John Lyle to A. C. and L. Shropshire	218	77
G—Postal card, July 19, 1880, Lyle to A. C. Shropshire	222	79
H—Postal card, July 30, 1880, Lyle to A. C. Shropshire	222	79
I—Postal card, Oct. 18, 1880, Lyle to A. C. Shropshire	223	79
J—Letter, Sept. 13, 1879, Lyle to A. C. Shropshire	223	79
Deposition of Jehu Rhinehart	224	80
D. Ryan	225	80
Exhibit O—Postal card, March 7, 1878, W. H. Cole to Ryan Bros.	235	84
P—Letter, March 8, 1878, W. H. Cole to Ryan Bros.	236	84

	Original.	Print.
Exhibit Q—Postal card, March 16, 1878, W. H. Cole to Ryan Bros.	238	85
R—Telegram, W. H. Cole to Ryan Bros.	239	85
S—Letter, Feb. 27, 1878, Ryan Bros. to W. H. Cole	240	85
T—Letter, March 22, 1878, Ryan Bros. to John Lyle	242	86
U—Letter, March 27, 1878, Ryan Bros. to John Lyle	244	87
V—Receipt, Jehu Rhinehart	245	87
W—Release from Alex. Rhinehart	246	87
X—Authority from L. Shropshire to pay claims, &c.	247	87
Y—Letter, April 22, 1879, W. H. Cole to Ryan Bros.	248	88
Z—Letter, Feb. 25, 1879, W. H. Cole to Ryan Bros.	249	88
Deposition of George Lyle	250	88
Exhibit A—Deed, John Lyle and wife to George Lyle, March 1, 1883	252	89
Abstract of defendants' evidence	257	91
Deposition of William Lyle	258	91
C. K. Ladd	263	93
John Lyle	272	96
Exhibit 1—Note, Gus and A. C. Shropshire to John Lyle, $1,000	293	104
2—Quitclaim deed, J. Rhinehart and wife to John Lyle, March 28, 1878	294	104
3—Quitclaim deed, A. C. and L. Shropshire to John Lyle, March 20, 1878	297	105
4—Note and mortgage, $10,000, to German savings bank	300	106
5—Receipt, savings bank to Lyle for $500	308	109
6—Quitclaim deed, L. and A. C. Shropshire to John Lyle, May 1, 1878	309	109
7—Lease, March 1, 1879, John Lyle to Shropshires	312	110
8—Receipt, savings bank to Lyle for $500	316	112
9—Assignment mortgage, savings bank to John Lyle	317	112
10—Letter, May 9, 1879, Ryan Bros. to John Lyle	320	113
11—Letter, July 4, 1879, A. C. Shropshire to John Lyle	321	113
12—Letter, Aug. 5, 1879, A. C. Shropshire to John Lyle	323	114
13—Letter, August 13, 1879, Mrs. A. C. Shropshire to John Lyle	325	114
14—Letter, Oct. 10, 1879, A. C. Shropshire to John Lyle	327	115
15—Letter, May 29, 1880, A. C. Shropshire to John Lyle	328	115
16—Letter, June 24, 1880, Ryan Bros. to John Lyle	330	115
17—Letter, June 30, 1880, A. C. Shropshire to John Lyle	331	116
18—Letter, Aug. 25, 1880, A. C. Shropshire to John Lyle	334	117
19—Letter, Aug. 30, 1880, A. C. Shropshire to John Lyle	337	117
20—Letter, Oct. 4, 1880, A. C. Shropshire to John Lyle	339	118
21—Letter, M'ch 25, 1881, A. C. Shropshire to John Lyle	341	118
22—Letter, May 19, 1881, A. C. Shropshire to John Lyle	343	119
23—Letter, Oct. 21, 1881, Ryan Bros. to John Lyle	345	120
24—Letter, Nov. 10, 1881, Ryan Bros. to John Lyle	346	120
25—Tax receipt to John Lyle for taxes 1879	347	121
26—Tax receipt to John Lyle for taxes 1880	348	122
27—Tax receipt to John Lyle for taxes 1881	349	123
Deposition of James K. Blish	350	123
Joseph G. Long	356	126
Javan Chamberlain	362	127
Joseph Jones	365	128
Robert Johnson	367	129

	Original.	Print.
Deposition of George Lyle	368	129
Abstract of complainants' evidence in rebuttal	374	132
Deposition of Loretta Shropshire	375	132
George H. Wilson	383	134
D. Ryan	386	135
Exhibit A—Draft to John Lyle for $147.98	389	136
B—Draft to John Lyle for $132.90	390	137
Deposition of Mrs. A. V. Dalrymple	391	137
George W. Harlan	393	138
Exhibit A—Interrogatory 7, deposition of Lyle in case of Rhinehart *vs.* Johnson	394	138
B—Interrogatory 9, deposition of Lyle in case of Rhinehart *vs.* Johnson	395	139
Deposition of Philip Carper	397	139
Edward Wright	399	140
S. H. Wright	401	140
A. C. Shropshire	403	141
William H. Cole	414	144
Abstract of additional evidence for defendants	421	147
Deposition of John Lyle	421	147
Exhibit—Note for $2,000, Shropshires to Cole	423	148
Deposition of A. C. Shropshire	426	149
Exhibit—Chattel mortgage, Shropshires to Cole	433	151
Deposition of Loretta Shropshire	437	153
William H. Cole	441	155
Deposition of John Lyle on behalf complainants	443	155
Exhibit—Deed, George Lyle and wife to Esther D. Lyle	447	157
Original stipulation as to transcript and evidence	451	158
Clerk's certificate	454	159

1 Pleas in the circuit court of the United States for the southern district of Iowa, central division, at a term thereof begun and holden at the United States court-rooms, in the city of Des Moines, in said district, on the second Tuesday of May, A. D. 1887, it being the 10th day of May, A. D. 1887, the Honorable James M. Love and Oliver P. Shiras, judges, presiding.

[Seal U. S. Circuit Court, Southern District Iowa.]

Attest: E. R. MASON, *Clerk.*

2 Be it remembered that heretofore, to wit, on the 16th day of October, 1883, a transcript of record from the district court of Iowa in and for Jasper county was filed in the clerk's office of the circuit court of the United States in and for the southern district of Iowa, central division; which said transcript of record, in a cause wherein Loretta Shropshire was complainant and John Lyle defendant, is in the words and figures following, to wit:

3 STATE OF IOWA,
Jasper County, } *ss:*

Be it remembered that on the 26th day of Feb., A. D. 1883, there was filed in the office of the clerk of the district court of Iowa in and for Jasper county a paper entitled a "petition in equity" in a cause entitled "Loretta Shropshire, plaintiff, *vs.* John Lyle, defendant;" which petition is in words and figures as follows, to wit:

STATE OF IOWA,
Jasper County, } *ss:*

In Dist. Court, Jasper County, Iowa, —— Term, 1883.

LORETTA SHROPSHIRE, Pl'ff,
vs.
JOHN LYLE, Def't. } Petition in Equity.

Petition.

To the honorable dist. court in and for Jasper Co., Iowa:

Your petitioner, Loretta Shropshire, as her cause of action against
the said defendant, respectfully makes known that she was
4 the absolute owner of the following-described land, situated in
Jasper county, Iowa, to wit:

The southeast quarter of section 31 and the southwest quarter of section 32 and the east half of northwest quarter of section 32 and the southwest ¼ of the northeast ¼ of section thirty-two and the west ½ of southeast ¼ of section 32, all in t'p 79, R. 19 W., 5th P. M., Iowa; also beginning at a point 42 rods south of the northeast corner of lot three (3), in sec. one (1), t'p 78, R. 21 W., 5th P. M., run thence south 48 rods, thence west 66.66 rods, thence north 98 rods, thence east to place of beginning.

And that she continued to be the owner of said land and occupied

the same till on or about the 1st day of Jan'y, 1881, when she sold her interest in and to the said land to the defendant, John Lyle, at the agreed price of forty-two & $\frac{50}{100}$ — per acre, out of which sum the said Lyle was to deduct the amount of liens and debts due and owing by pl'ff to him in the sum of fourteen thousand and two hundred and fifty dollars, less by the sum of one thousand dollars to be credited on said sum, as hereinafter stated, leaving
5 a balance due the plaintiff of $9,700 and interest on the same at six per cent. since the date last above given.

Your petitioner further shows to the court that the said indebtedness arose in the manner hereinafter specifically set out and stated—that is to say:

On or about the 1st day of May, 1877, your petitioner became indebted to the German Savings Bank of Davenport in the sum of ten thousand dollars ($10,000); to secure the payment of said sum she executed the note secured by a certain mortgage on said lands. A copy of said mortgage is hereto attached and marked Exhibit "A" and made part of this petition with the same effect as if set out herein in full, and was filed for record and recorded, as shown by the endorsement thereon.

That afterwards your petitioner borrowed from the defendant, John Lyle, the sum of four thousand two hundred and fifty dollars, and for the purpose of securing the payment of the said sum of money she, with her husband, executed to the said def't a certain indenture, a copy of which is hereto attached and marked
6 "Exhibit B" and made part hereof with the same effect as if set out herein in full; that said lands conveyed by said last-named instrument was the homestead of the pl'ff; that the said instrument, though an absolute deed upon its —, was in fact executed and delivered by pl'ff to the said def't as security for the payment of the said ($4,250.00), and was so received by def't, and not as an absolute conveyance of said land.

Your petitioner further shows and makes known that all of the lands first above described herein (in all 540 acres), except the said homestead of plaintiff and her husband conveyed to def't as above stated, were held by Jehu Rhinehart in trust for the plaintiff herein, and that def't then held an assignment of the said mortgage by pl'ff to the German Savings Bank of Davenport, Iowa, a copy of which is hereto attached as Exhibit "C," and, the said defendant desiring to hold the legal title to all of the said tract of land first above described, the pl'ff caused said land, held in trust for her by the said Jehu Rhinehart, to be conveyed by quitclaim deed
7 to the def't for the purpose solely of indemnifying the said def't and securing to him the payment of the said ten thousand dollars already represented by said mortgage and the four thousand two hundred and fifty dollars had by pl'ff of def't, as above stated, and your petitioner shows and avers that the def't paid no other or different consideration for the said lands then as above set out.

Your petitioner further shows that afterwards, on the 1st day of May, 1878, the pl'ff herein, with her husband, executed to the def't,

John Lyle, their certain instrument in writing conveying by quitclaim all their interest in and to the lands therein described, being the same lands first described in this petition. A copy of said instrument is hereto attached, marked Exhibit " E," and made part of this petition with the same effect as if set out herein in full; that there was no other or different consideration for said deed than as above stated to assure the payment of the said sums named as the consideration in said deeds, fourteen thousand two hundred and fifty dollars ($14,250), and that no new consideration entered
8 into this deed other than already constituting the consideration for deeds formerly made; that though upon its face the said last-described deed is an absolute deed of conveyance, it was made by pl'ff and her husband and received by the def't, John Lyle, solely as a security for the repayment to him of the $10,000 represented by the said mortgage above set out and the sum of $4,250 loaned by def't to pl'ff as above stated, and that all of said quitclaim deeds should stand simply and solely as a mortgage to secure the payment of the sums of money above stated, amounting in all to ($14,250).

Your petitioner further shows that she and her husband remained in possession of said lands with the knowledge and assent of the def't and paid him interest on said sum, as an accounting will show, till the 1st of Jan'y, 1881, at which time she sold to the def't all of the above-described lands at the agreed price of forty-two and $\frac{50}{100}$ dollars per acre, or $22,950.00, from which def't was to deduct the said $14,250, less the sum of one thousand dollars, which was a
9 part of the consideration and agreement for said sale, leaving a balance due the plaintiff of nine thousand and seven hundred dollars.

That the plaintiff herein and her husband thereupon surrendered possession of said land to the def't and the def't entered into possession and has occupied said lands and premises ever since by his agents or himself.

Your petitioner further makes known that the said Lyle has failed, neglected, and refused to pay any portion of the said balance due your petitioner, and that there is now due and owing her the sum of nine thousand seven hundred dollars (9,700) as the unpaid purchase-money due her from the sale of said lands, which included her homestead, which was of the value of the sum remaining unpaid; and your petitioner alleges that she has in no manner waived her liens on said lands for the balance unpaid nor taken any security for the same.

That the title in and to the said land now stands of record in the name of def't, and unless restrained by the order of this court
10 your petitioner fears that he will dispose of or encumber said lands so as to defeat her in the enforcement of her vendor's lien for the purchase-money of the same.

Your petitioner further shows that the def't is a resident of the State of Illinois.

Wherefore your petitioner prays that she may have decree establishing and enforcing her vendor's lien against said lands described in this petition to the extent of the sum due her as the unpaid purchase-money for said land.

That she may have an order for the sale of the same or so much thereof as may be necessary to satisfy said judgment lien, interest, and costs.

That the plaintiff's interest in the said lands be decreed to be $9,700; that she have interest on the same as provided by law from Jan'y 1st, 1881; that the value of her homestead be decreed and ascertained; that she have a writ of attachment against said lands or any property of plaintiff within the jurisdiction of this court; that she have an injunction against the defendant restraining him from selling, incumbering, or in any manner disposing of said 11 lands; that the said several quitclaim deeds be reformed and decreed simply mortgages for the security of the sum of $14,250, together with an accounting between the defendant and herself as to the moneys paid for interest on said loans, together with such other and further relief as the court may deem equitable and just.

DAVID RYAN,
Att'y for Pl'ff.

I, Loretta Shropshire, on oath say I am the pl'ff in the above cause; that I have heard the foregoing petition read, and that the matters and things therein contained are true as I verily believe.

LORETTA SHROPSHIRE.

Subscribed and sworn to before me and in my presence by Loretta Shropshire this 24th day of February, 1883.

DAVID RYAN,
[L. S.] *Notary Public.*

12 Exhibit "A," made part of this pet.

Loretta Shropshire
to } Mortgage.
German Savings Bank.

Book 94, page 246. Filed for record the 1st day of May, 1879, at 2 o'clock p. m. W. Carrothers, recorder.

This indenture, made and executed the first day of May, A. D. eighteen hundred and seventy-seven, by and between Loretta Shropshire and A. C. Shropshire, of the county of Jasper and State of Iowa, parties of the first part, and the German Savings Bank of Davenport, Scott county, Iowa, a body corporate, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten thousand dollars (10,000) paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted and sold, and do by these presents grant, bargain, sell, and convey and confirm, unto the said party of the second part, its successors and assigns forever, the certain tract or parcel of real estate, situated in the county of Jasper and State of Iowa, described as follows, to wit:

13 The southeast quarter of section thirty-one (31), in township seventy-nine (79) north, range nineteen (19) W., of 5th P. M., Iowa; also the southwest *west* quarter and the south half of the northwest quarter, and also the southwest quarter of the northeast quarter, and also the west half of the southeast quarter, all in section thirty-two (32), in township and range aforesaid; also the following-described piece of land, commencing forty-two (42) rods south of the northeast corner of lot three (3), section one (1), township seventy-eight (78) north, range twenty (20) west, of 5th P. M., thence running *running* south forty-eight rods, thence west sixty-six and sixty-six one-hundredths rods, thence north forty-eight rods, thence east sixty-six & $\frac{66}{100}$ rods to place of beginning, containing in all five hundred & forty acres, and being the same property partitioned to Mrs. Loretta Long, now Mrs. Loretta Shropshire, in the circuit court of Jasper county, Iowa, upon report of referees filed August 26th, 1876; to have and to hold the premises above described, with all appurtenances thereto belonging, unto the said second party and to its successors and assigns forever. The
14 said Loretta Shropshire and A. C. Shropshire represent to and covenant with the party of the second part that *he* has good right to sell and convey said premises, that they are free from incumb*e*rance, and that *he* will warrant and defend said premises against the lawful claims of all persons whomsoever, and the said A. C. Shropshire hereby releases his right of dower in and to the said premises, and said parties of the first part relinquish*es* and *and* convey*s* all rights of homestead in said premises.

This conveyance to be void on the following conditions: That said Loretta Shropshire & A. C. Shropshire shall pay said German savings bank or order the sum of ten thousand (10,000) dollars, with interest on all of said money from May 1st, 1877, until paid, at the rate of ten per cent. per annum, payable semi-annually, according to the one promissory note of the said Loretta and A. C. Shropshire dated May 1st, 1877; and it is stipulated in said note and in the mortgage that should any of the said interest not be paid when due it shall bear interest at ten per cent. per
15 annum from the time the same becomes due and this mortgage shall stand as security for the same; that said Loretta & A. C. Shropshire shall pay all taxes and assessments levied upon said real estate before the same becomes delinquent; and in case not so paid the holder of the mortgage shall have the right to declare the whole sum of money herein secured due and collect*a*ble at once, or he may pay such taxes or assessments and be entitled to interest on the same at the rate of ten per cent. per annum and this mortgage shall stand as security for such taxes and interest.

That the said Loretta and A. C. Shropshire shall — the buildings on said premises to be insured against loss by fire in some good company, to be selected by mortgagee, in the sum not less than five thousand (5,000) dollars, loss, if any, to be payable to said second party, and shall deliver said policy or renewal receipt to said

second party, and upon failure to make insurance or to deliver said policy or renewal receipts said second party may make such insurance or treat this mortgage as due, and if he elects to make such insurance he shall be entitled to interest on the amount paid
16 therefor at the rate of ten per cent. per annum and this mortgage shall stand as security for the amount so paid, with interest as aforesaid.

It is further stipulated and agreed that a failure to pay any of the said money, either principal or interest, within ten days after the same becomes due, or a failure to perform or comply with any of the foregoing conditions or agreements, shall cause the whole sum of money herein secured to become due and collectable at once, if the holder of said note so elect, and this mortgage may thereupon be foreclosed immediately for the whole of said money, interests, and costs; and it is further expressly agreed that in the event of any failure to pay said sums of money or part thereof or the interest thereon when due and payable, said second party shall be, and hereby is, authorized to take immediate possession of said property and to rent the same, and shall be held liable to account to said first party only for the net profits thereof.

It is also agreed that the taking possession thereof as above
17 provided shall in no manner prevent or retard said second party in the collection of said sums by foreclosure or otherwise.

And it is further agreed that in the event of the commencement of an action for the foreclosure of this mortgage upon any default being made that one hundred dollars' (100) attorney fee shall become due from the first party to the second party and shall be paid in the event of a settlement before a decree of foreclosure shall be obtained, and that — a decree of foreclosure shall be entered, then two hundred dollars' att'y's fee shall be taxed by the court and included in said decree.

In testimony whereof the said part*y* of the first part have hereunto set their hands and seals the day and year first above written.

LORETTA SHROPSHIRE.
ALEX. C. SHROPSHIRE.

STATE OF IOWA, } ss:
Jasper County, }

Be it remembered that on this 1st day of May, 1877, before the undersigned, a notary public in and for said county, person-
18 ally appeared Loretta Shropshire & Alex. C. Shropshire, to me personally known to be the identical persons whose names are affixed to the foregoing mortgage deed as grantees, and acknowledged the said instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

ROBERT RYAN,
Notary Public.

[L. S.]

19 EXHIBIT "B."

Loretta Shropshire & A. C. Shropshire }
to } Quitclaim Deed.
John Lyle. }

Book 97, page 240. Filed for record on the 14th day of May, A. D. 1878, at 11 o'clock a. m. W. Carrothers, recorder.

Know all men by these presents that Loretta Shropshire and Alexander Shropshire, her husband, of Jasper county, State of Iowa, in consideration of the sum of one thousand dollars in hand paid, do hereby sell and quitclaim unto John Lyle, of Henry county and State of Illinois, all interest in and to the following-described premises, to wit:

The east eight and $\frac{82}{100}$ — of the northeast quarter of the southeast quarter of section No. thirty-one (31) and the west thirty-one & $\frac{18}{100}$ acres of the northwest quarter of the southwest quarter of section No. thirty-two (32), all being in township No. seventy-nine (79) north, range No. nineteen (19) W., of fifth princip*le* meridian, in the county of Jasper and State of Iowa, this being the homestead of the grant*ees* herein.

And the said Alexander C. Shropshire hereby relinquishes all h- right of dower in and to the above-described premises.

20 Signed the 20th day of March, 1878, in presence of—

LORETTA SHROPSHIRE.
A. C. SHROPSHIRE.

STATE OF IOWA, }
Jasper County, } *ss:*

On this 20 day of March, A. D. 1878, before me, a notary public in and for said county, personally came Loretta Shropshire, personally to me known to be the identical person whose name is affixed to the above deed as grantor, and acknowledged the same to be her voluntary act and deed.

Witness my hand and notarial seal the day and year above written.

[L. S.] R. RYAN,
Notary Public.

STATE OF KENTUCKY, }
Fayette County, } *ss:*

On the 25th day of March, 1878, before me, a notary public in and for said county of Fayette and State of Kentucky, personally came Alexander C. Shropshire, personally to me known to be the identical person whose name is affixed to the annexed deed as grant*ee*, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the day and year above written.

JOHN SHELBY,
Notary Public, Fayette County, Kentucky.

21 EXHIBIT "C."

Jehu Rhinehart & Harriet Rhinehart
to
John Lyle.
} Quitclaim Deed.

Book 97, page 232. Filed Apr. 25th, 1878, at 2$\frac{3}{4}$ o'clock p. m. W. Carrothers, recorder.

Know all men by these presents that we, Jehu Rhinehart and Harriet Rhinehart, his wife, of Jasper county, State of Iowa, in consideration of the sum of forty-two hundred and fifty dollars in hand paid, do hereby sell, convey, and quitclaim unto John Lyle, of Henry county and State of Illinois, all our interest in and to the following-described premises, to wit:

The southeast quarter of section thirty-one (31), except 8 & $\frac{82}{100}$ A. off east side of the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, of said section, and the S. W. $\frac{1}{4}$ of section thirty-two, except 31$\frac{18}{100}$ acres off W. side of N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of said section — (32); also the S. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ & the W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ — (32), all in 79 north, R. 19 W., 5th P. M.; also the following: Commencing 42 rods S. of N. E. corner of lot three (3), section 1, t'p 78, R. 21 W., 5th P. M., Iowa, run S. 48 rods, W. 66$\frac{66}{100}$ rods, thence N. 48 rods, thence E. to place of beginning

22 And the said Harriet Rhinehart hereby relinquishes all her right of dower in and to the above-described premises.

Signed the 28th day of March, 1878, in presence of—

JEHU RHINEHART.
HARRIET RHINEHART.

STATE OF IOWA,
Jasper County,
} *ss:*

On this 28th day of March, A. D. 188–, before me, a notary public in and for said county, personally came Jehu Rhinehart & Harriet Rhinehart, his wife, personally to be known to be the identical persons whose names are affixed to the above deed as grantors, and acknowledged the same to be the- voluntary act and deed.

Witness my hand and notarial seal the day and year above written.

(Signed) G. W. HERTZOG,
Justice of Peace.

23 EXHIBIT "E."

Loretta Shropshire
to
John Lyle.
} Q. C. D.

Filed for record August 5th, 1878, 9$\frac{1}{4}$ o'clock a. m. W. Carrothers, recorder.

This indenture witnesseth that the grantees, Loretta Shropshire and Alexander C. Shropshire, her *her* husband, county of Jasper and State of Iowa, for the consideration of fourteen thousand two hundred and fifty ($14,250) dollars, convey and quitclaim to John Lyle, county of Henry and State of Illinois, all interest in the following-described real estate, to wit:

The southeast $\frac{1}{4}$ of sec. 31; also S. W. $\frac{1}{4}$ 32, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ 32, S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ 32, W. $\frac{1}{2}$ of S. E. — 32, all in 79, 19 W., 5th P. M.; also beginning at a point 42 rods S. of N. E. corner of lot 3, in section 1, t'p 78, R. 21 W., run S. 48 rods, W. $66\frac{66}{100}$ rods, north 48 rods, east to beginning; and the said Alex. C. Shropshire hereby relinquishes all his right of dower in and to the above-described premises, hereby releasing & waiving all rights under and by virtue of the homestead exemptions laws of this State.

Dated the 1st day of May, 1878.

LORETTA SHROPSHIRE.
ALEXANDER C. SHROPSHIRE.

24 STATE OF IOWA, }
Jasper County, } *ss:*

I, L. B. Westbrook, clerk in and for the said county, in the State aforesaid, do hereby certify that Loretta Shropshire and Alexander C. Shropshire, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waive- of the right of homestead.

Given under my hand and official seal the 5th day of August, 1878.

L. B. WESTBROOK, *Clerk.*

Filed for record Aug. 5th, 1878, at 9¼ o'clock a. m.

W. CARROTHERS, *Recorder.*

Recorded in Book 99, page 72.

25 And afterwards, to wit, on the 9th day of March, A. D. 1883, there was filed in this cause and court a paper entitled "an affidavit for publication of original notice," which is in words and figures as follows, to wit:

STATE OF IOWA, }
Jasper County, } *ss:*

In Circuit Court, Jasper Co., Iowa.

L. SHROPSHIRE }
vs. } Affidavit for Publication of Original Notice.
JOHN LYLE. }

I, A. C. Shropshire, on oath say that I am acquainted with the above-named John Lyle and that he is a non-resident of the State of Iowa; and, further, that the original notice in this cause cannot be served on him in the State of Iowa personally.

A. C. SHROPSHIRE.

Subscribed and sworn to before me and in my presence by A. C
Shropshire the 8th day of March, 1883.

DAVID RYAN,
Notary Public.

[L. S.]

26 And afterwards, to wit, on the 14th day of April, A. D
1883, there was filed in this cause and court a paper entitle
"a proof of publication of original notice;" which said "proof" wa
in words & figures as follows, to wit:

Proof of Pub. Original Not.

STATE OF IOWA,
Jasper County, } *ss:*

I. F. Sherman, being duly sworn, says he is the editor & prop-ie
tor of the Iowa State Democrat, a weekly newspaper of general cir
culation printed and published in said county, and that the notic
hereto attached was published in said newspaper for four successiv
weeks, to wit, March 22nd and 29th, April 5th and 12th, 1883; an
further saith not.

I. F. SHERMAN.

Subscribed in my presence and sworn to before me by J. F. Sher
man this 14th day of April, 1883.

ADAMS M. HARRAH,
Notary Public.

[L. S.]

Pub. fees, $5.00.
Original notice.

STATE OF IOWA,
Jasper County, } *ss:*

To John Lyle:

27 You are hereby notified that there is now on file in th
office of the clerk of the district court of Jasper county, Iowa
the petition of Loretta Shropshire, claiming of you nine thousan
and seven hundred dollars and interest thereon, and asking that th
said cause be enforced as a vendor's lien against property situate
in Jasper county, Iowa, as a part of the unpaid purchase-money;
that certain deeds be decreed as mortgages only made by plainti
to you, and for general relief in equity.

You are referred to said petition for full particulars, and unless
you appear on or before noon of the second day of the next term o
said district court, to be commenced on the first Monday in September, A. D. 1883, the same being the 3d day of said month and year,
and make defence to said claim your default will be entered and
judgment and decree rendered as prayed for in said petition and for
costs of suit.

D. RYAN,
Attorney for Plaintiff.

28 And afterwards, to wit, on the 14th day of September, A. D. 1883, there was filed in this cause and court a paper entitled a "motion for removal to the United States court;" which motion was in words and figures as follows, to wit:

Pet. for Removal to U. S. Court.

STATE OF IOWA,
County of Jasper. }

In the District Court, September Term, A. D. 1883.

LORETTA SHROPSHIRE, Plaintiff,
vs.
JOHN LYLE, Defendant. }

Petition for removal to the circuit court of the United States, district of Iowa.

To the said district court in and for the said county of Jasper:

Your petitioner, John Lyle, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

29 That the controversy in said suit is between citizens of different States, and that your petitioner was at the time of the commencement of this suit and still is a citizen of the State of Illinois, and that the said Loretta Shropshire, plaintiff as aforesaid, was then and still is a citizen of the State of Iowa.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said circuit court *of* said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no farther herein except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the district of Iowa; and he will ever pray.

JOHN LYLE.

WINSLOW & WILSON &
LADD & ROSSITER,
Att'ys for Petitioner.

30 And afterwards, on the same day, to wit, on the 14th day of September, A. D. 1883, there was filed in the same cause and court a paper entitled "a bond;" which bond was in words and figures as follows, to wit:

Bond for Removal.

Know all men by these presents that I, John Lyle, as principal and Charles K. Ladd and George Lyle & Wm. Vaughon, as sureties are held and firmly bound unto Loretta Shropshire in the penal sum of one thousand dollars; the payment of which sum, well and truly to be made unto the said Loretta Shropshire, *his* heirs and assigns we bind ourselves, our heirs, representatives, and assigns, jointly an severally, firmly by these presents; yet upon these conditions, tha the said John Lyle having petitioned the district court of Jaspe county, in the State of Iowa, for the removal of a certain caus therein pending, wherein the said Loretta Shropshire is plaintif and the said John Lyle is defendant, to the circuit court of th United States in and for the district of Iowa:

31 Now, if the said John Lyle, your petitioner, shall enter i the said circuit court of the United States on the first day o its next session a copy of the record in said suit, and shall well an truly pay all costs that may be awarded by said circuit court of th United States if said court shall hold that said suit was wrongfull or improperly removed thereto, then this obligation to be void otherwise in full force and virtue.

Witness our hands and seals this fourth day of September, A. D 1883.

JOHN LYLE. [SEAL.]
CHARLES K. LADD. [SEAL.]
WM. VAUGHON. [SEAL.]

STATE OF ILLINOIS, }
County of Henry, } *ss:*

I, Charles K. Ladd, do solemnly swear that I signed the above bond as surety and that I am worth over and above all debts and exemptions more than ten thousand dollars.

CHARLES K. LADD.

32 Subscribed and sworn to by the said Charles K. Ladd before me — my office, in Kewanee, in said county of Henry and State of Illinois, this fourth day of September, A. D. 1883.

JOSEPH A. TOLCOTT,
Notary Public.
[L. S.]

Filed and approved Sept. 14th, 1883.

M. P. DOUD,
Clerk of the District Court of Iowa in and for Jasper County.

33 Be it remembered that on the same date, to wit, Sept. 14th, 1883, at a session of the district court of Iowa in and for said Jasper county—Hon. J. K. Johnson, judge of the sixth judicial district, sole judge presiding, J. C. Hunter, sheriff of this county, and M. P. Doud, clerk of this court, being present—among others the following proceedings were had in this cause, to wit:

LORETTA SHROPSHIRE *vs.* JOHN LYLE. } No. 1799. Equity. Transferred to United States Circuit Court. Pl'ff Excepts.

Order.

STATE OF IOWA,
Jasper County, } *ss:*

And now, on this 14th day of Sept., A. D. 1883, this cause coming on for trial upon defendant's petition for removal of said cause to the United States circuit court, it is submitted upon the pleadings and proofs offered.

And on the same day the court, being sufficiently advised in the premises, finds that the said petition is true and that the defendant has in all things complied with the law in the premises.

34 It is therefore ordered that the said cause be, and the same is hereby, transferred & removed to the United States circuit court, and the clerk is ordered to approve the bond tendered.

And, by agreement of parties, defendant is to file his answer in the cause as of this date; to which ruling of the court the pl't'ff excepts.

Signed at end of day's proceedings.

J. K. JOHNSON, *Judge.*

35 *Fee Bill.*

M. P. Doud, docket fee; p'd by Ryan	1 50
J. F. Sherman, pub. notice	5 00
M. P. Doud, continuance	50
M. P. Doud, order	50
M. P. Doud, transcript, p'd by H. S. Winslow	7 10
Total	$14 60
Express, paid by H. S. Winslow	25

(Endorsed:) 2023. Eq. Loretta Shropshire *vs.* John Lyle. Transcript from district court, county of Jasper, Iowa. Filed Oct. 16, 1883. Ed. R. Mason, clerk.

36 *Certificate.*

STATE OF IOWA,
Jasper County, } *ss:*

I, M. P. Doud, clerk of the district court of Iowa in and for Jasper county, do hereby certify that the within and foregoing is a full, true, and complete transcript of all the papers filed and all the records made and of all the proceedings had in this said cause of Loretta Shropshire *vs.* John Lyle, in said court, as full, true, and complete as the original which remains of record in my office.

[SEAL.] Witness my hand and the seal of the said district court this 15th day of Oct., A. D. 1883.

(Signed) M. P. DOUD, *Clerk.*

37 And on the 20th day of December, 1884, the defenda
John Lyle, by his solicitors, Cole, McVey & Clark, filed
said cause his answer to complainant's bill of complaint; which s
answer is in the words and figures following, to wit:

38 In the Circuit Court of the United States in and for t
Southern District of Iowa, Central Division, in the Eigh
Circuit.

LORETTA SHROPSHIRE, Complainant,
against
JOHN LYLE, Defendant.

*The Answer of John Lyle, Defendant, to the Bill of Complaint of Lore
Shropshire, Complainant.*

This defendant, now and at all times hereafter reserving a
saving unto himself all benefit and advantage of exception whi
can or may be had or taken to the many errors, uncertainties, a
other imperfections in the said complainant's said bill of complai
contained, for answer thereto, or unto so much and such parts ther
as this defendant is advised is or are material or necessary for hi
to make answer unto, this defendant, for answer, says that he adm
that the complainant was the absolute owner of the land describ
in her said bill of complaint. The defendant denies that she co
tinued to be *be* the owner of said land until the first day
39 January, 1881. Defendant admits that she occupied sa
land until said date; denies that she sold her interest in a
to the said land to the defendant, John Lyle, at the agreed price
forty-two and $\frac{50}{100}$ dollars per acre; denies that she sold her inter
in said lands to the defendant on January 1st, 1881; denies that t
defendant was to deduct the amount of liens and debts due a
owing by pl'ff to him in the sum of fourteen thousand and two hu
dred and fifty dollars, less by the sum of one thousand dollars; den
that one thousand dollars was to be credited on said sum, as the
after stated in the bill of complaint, or in any other manner; den
that there was left a balance due complainant of $9,100 and int
est on the same at six per cent. per annum since the date last abo
named; denies that any sum or sums whatever was due or to b
come due to complainant on account of balance of purcha
money, interest, or for any other cause or reason or accou
whatsoever. Defendant admits that on or about the 1st d
of May, 1877, the complainant became indebted to the Ge
man Savings Bank of Davenport in the sum of ten tho
40 sand dollars; admits that to secure the payment of said su
said complainant executed a note secured by a certain mo
gage on said lands; admits that a copy of said mortgage is attach
to said bill of complaint, and that the same is marked Exhibit "A
admits that said mortgage was filed for record, as appears by e
dorsement thereon. Defendant denies that afterwards the complai
ant borrowed of defendant the sum of four thousand two hundr
and fifty dollars; denies that for the purpose of securing *of* the sa

sum of money she, with her husband, executed to the said defendant a certain indenture. Defendant admits that the complainant, with her husband, executed a certain indenture, a copy of which is attached to complainant's bill, marked Exhibit "B;" admits that the said lands conveyed by said last-named instrument was the homestead of the complainant; denies that the said instrument, though an absolute deed upon its face, was in fact executed and delivered by complainant to the said defendant as security for the payment of the said ($4,250.00); denies that it was so received
41 by defendant; denies that it was not an absolute conveyance of said lands; denies that all of the lands first described in said bill of complaint, except the said homestead of complainant and her husband conveyed to defendant, were held by Jehu Rhinehart in trust for the complainant. Defendant denies that he then held an assignment of the ten-thousand-dollar mortgage; admits that a copy of said mortgage is attached to the bill of complaint, marked Exhibit "C;" denies that complainant caused the said Reinhart to convey said land to the defendant for the purpose solely of indemnifying the said defendant and securing to him the payment of the said ten thousand dollars already represented by said mortgage and the four thousand two hundred and fifty dollars had by plaintiff of defendant. Defendant denies that the complainant caused said conveyance from Reinhart to defendant to be made at all. Defendant denies that he paid no other or different consideration for the said lands than as set forth in the complainant's bill of complaint. Defendant admits that on the 1st day of May, 1878, the complainant, with her husband, executed to the defendant,
42 John Lyle, an instrument in writing conveying by quitclaim all their interest in and to the lands therein described, being the same lands first described in the complainant's bill of complaint; admits that a copy of said instrument is attached to said bill of complaint, marked Exhibit "E." Defendant denies that there was no other or different consideration for said deed than as before stated in said bill of complaint—to assume the payment of the said sums named as the consideration in said deeds ($14,250); denies that no new consideration entered into this deed other than — already constituted the consideration for deeds formerly made; admits that said last-named deed is an absolute deed of conveyance on its face; denies that it was made by the complainant and her husband and received by the defendant, John Lyle, solely as a security for the repayment to him of the $10,000 represented by the said mortgage above referred to and the sum of $4,250; denies that all of said quitclaim deeds should stand simply and solely as a mortgage to secure the payment of the sum of $14,250.00.

43 Defendant admits that the complainant remained on said premises until the 1st day of January, 1881; denies that they were in legal possession; denies that they paid interest on said sum until the said last-named date.

Denies that on said 1st day of Jan., 1881, the complainant sold to the defendant all of said lands at the agreed price of forty-two and $\frac{50}{100}$ dollars per acre, or $22,950.00, from which defendant was to deduct the sum of $14,250 less the sum of one thousand dollars; nies that there is a balance due complainant of nine thousand sev hundred dollars; denies that there is any sum due or to beco due complainant whatever. Defendant admits that the compla ant then left said premises, but denies that she surrendered up p session at that time, but affirms that complainant was at that ti and long prior thereto the tenant of the defendant.

Defendant denies that he has occupied said lands and premi ever since said date by himself or tenants. Defendant denies t he has refused to pay said balance or any portion thereof, and firms that no demand was ever made on him for the sa
44 but admits that he now refuses and has refused to pay a part of said sum since the said filing of said bill of co plaint; denies that there is any portion of said sum due or to come due the complainant; denies that there is now due and owei complainant nine thousand seven hundred dollars ($9,700) or a other sum as the balance or unpaid purchase-money due her fr the sale of said lands, which included her homestead; denies t her homestead was of the value of said sum alleged to be due; nies that said complainants has in no manner waived her lien said lands for the balance of said sum alleged; denies that she any lien on said lands for said sum or for any other sum; den that the title to said lands now stands of record in name of fendant; denies that the title to said lands stood of record in s defendant at the time complainant's bill was filed in the St court; denies that the complainant has a vendor's lien on said la or any part thereof.

Defendant admits that he is a resident of the State of Illino denies that he is about to dispose of or incumber said lands or a part thereof.

45 Defendant denies that the complainant has any interest said lands or any part thereof. Defendant denies each a every allegation in the complainant's bill contained not here specifically admitted or denied.

The defendant, further answering, says that in the year 18 and for many years prior thereto, as now, defendant was a reside of Kewanee, Illinois, and during that year made the acquaintan of the husband of the complainant, Alexander C. Shropshire; th said Alexander came from Kentucky during the year 1876 and to up his residence in the said village of Kewanee; that the said Ale ander soon after intermarried with the complainant, who was the as now, a resident of Jasper county, Iowa; that both complaina and her said husband were at that time, before and since, deale and breeders of fine-blooded horses and cattle; that defendant w then, as now is, interested in fine blooded horses and cattle, a became intimately acquainted with the complainant. In the mea time a relative of said Alexander had intermarried with
46 member of defendant's family; that both the complaina and her said husband were reported rich, and, being perso of good address, fluent talkers, and plausible manners, soon won t confidence of the defendant, and, at complainant's request, defen

ant from time to time loaned her money and accom-odated her by buying cattle and horses for stocking the farm described in her bill of complaint; this continued until the end of the year 1877 or beginning of the year 1878, when defendant learned that the complainant had mortgaged her said farm for $10,000.00, and was otherwise indebted, when, to protect his interests and to relieve the complainant from financial distress, he was induced by the complainant to purchase the 40 acres described in the bill of complaint as the homestead, which he did on the 20th day of March, 1878; that the title thereto was and is evidenced by a good and sufficient deed of the date of March 20th, 1878; that this purchase was subject to the $10,000.00 mortgage aforesaid, and was for a good and valuable consideration and for full value. Defendant further says that
47 the said complainant was prior to December 1, 1877, largely
indebted to various persons, and that large judgments had, prior to that date, been rendered by the district court of Jasper county against said complainant; that said judgments were liens on the whole of said 540 acres other than the homestead described in the complainant's bill of complaint, and that on the 3rd day of December, 1877, a writ of execution was issued out of said district court, directed to the sheriff of said Jasper county, under which said sheriff caused a levy to be made on said 540 acres of land except said homestead, and duly advertised the same, and on the 19th day of February, A. D. 1878, he sold said tract of 540 acres of land, less the said homestead, at public sale, to one Jehu Reinhart, he, the said Reinhart, being the highest and best bidder, and in the pursuance of the order of the court in that behalf made and executed to the said Jehu Rei-hart a good and sufficient deed to said 540 acres of land, less the said homestead, and delivered the said deed to the said Jehu Reinhart on the 19th day of February, 1878; that said proceedings were regular, and all
48 things were done required by law in the procuring of
said judgment and in the issuing & levying of the same and in the sale and the conveyance in pursuance thereof. Defendant further says that on the 28th day of March, 1878, he purchased from the said Jehu Reinhart the said 540 acres of land, less the said homestead, for a valuable consideration, and that the said Jehu Reinhart on said day, by a good and sufficient deed duly executed and delivered, conveyed said lands to this defendant. The defendant further says that for a good and valuable consideration the complainant and her husband, by a good and sufficient deed, conveyed to him said 540 acres of land in complainant's bill described on the first day of May, 1878; that said deed was duly executed, signed, sealed, and delivered to this defendant; that neither said complainant nor any one for her ever redeemed said lands sold to said Reinhart, and the time for the redemption thereof expired long before the commencement of this suit.

Defendant says that on the 2nd day of May, 1879, he paid
49 to the said German savings bank the interest and principal
of said mortgage, amounting to about $12,000.00, and took an assignment thereof; that all of said deeds and mortgages and

assignments were duly filed for recorded and recorded in the office of the recorder of Jasper county, Iowa.

Defendant further says that on the first day of March, 1879, he leased to complainant and her said husband all of said 540 acres of land for the term of one year by written lease duly signed and delivered; that the rent agreed to be paid by the said complainant and her husband was $1,700 per year; that the said lease was extended for the further term of one year on the 27th day of January, 1880, and that the complainant and her said husband continued to occupy said lands under said lease until about the 1st day of January, 1881, when they, being unable to pay def. said rents, vacated said premises.

Defendant says he continued to own said 540 acres of land until the spring of the year 1882, when he sold said land to George Lyle;
that the defendant, by a duly executed deed, conveyed all of
50 said 540 acres of land to the said —— Lyle on the ——
day of ——, 1883; that said deed was duly delivered and recorded and long before this suit was brought and the said —— Lyle was in open and notorious possession as the owner of said farm more than one year before the commencement of this suit, and that said George Lyle has been, since the spring of 1882, the legal and *bona fide* owner of said land and in the possession thereof. Defendant further says that he has paid to and for the said complainant at her request, including principal and interest, since the year 1876 more than $28,000.00, and that the said complainant is now, in good conscience and equity, indebted to the defendant in the sum of more than $10,000. The defendant further says that on the 27 day of January, 1880, he made a final settlement with the complainant in writing in the presence of witnesses of all differences between the said parties and took and retained obligations, which he now has, for a final balance of $7,900, which is now due and unpaid. Defendant says that he has always been fair and reasonable in his
dealings with said complainant; that he has constantly ad-
51 vanced large sums of money for her at her request, and that
the complainant and her husband availed themselves of the defendant's sympathy, his old age, and feebleness to extract immense sums of money from him; that prior to said sale of said land to the said —— Lyle he always told said complainant that if she would pay to complainant the money paid for said farm that she could at any time have the same; that he did not buy it because he wanted it, but because he was compelled to purchase the said farm or loan a large sum of money; that the said complainant always appeared well satisfied with the sale of the said farm, and that at no time prior to the commencement of this suit did she, by herself, her agent, or otherwise, ever intimate that any money whatever was due from the defendant to the complainant. Defendant says that it is utterly false and without color of truth that he purchased said farm from complainant on January 1st, 1881, at $42.50 per acre or at any other sum or price; that said alleged sale is false and without any basis of fact whatever.

52 Defendant avers that each and all of said conveyances were made in good faith upon good and valid considerations; that they each and all are what they purport to be on their face, and nothing other.

Defendant says it is not true that said quitclaim deeds were mortgages nor either of them, but good and valid conveyances, and that the same were unquestioned by the complainant until the commencement of this suit.

And the said defendant denies further, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto not herein *herein* and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct.

53 And humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JOHN LYLE.
(Signed) COLE, McVEY & CLARK,
Solicitors for Defendant.

UNITED STATES OF AMERICA, } ss:
Northern District of Ills., }

John Lyle, being first duly sworn, does depose and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents, and that the same is true to his own knowledge except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

(Signed) JOHN LYLE.

Subscribed and sworn to before me this 13th day of December, A. D. 1884, at my office, in Kewanee, in the county of Henry and State of Illinois.

[SEAL.] (Signed) FRANK S. ROSSETER,
Notary Public of Kewanee, in and for the said Henry County.

(Endorsed:) U. S. circuit court, central division, southern dist. of Iowa. Loretta Shropshire *vs.* John Lyle. Answer. Filed Dec. 20, 1884, by leave of court. Ed. R. Mason, clerk. Cole, McVey & Clark, sol's.

54 And on the 5th day of January, 1885, the complainant, by Phillips & Day, her solicitors, filed in said cause her replication to the answer of defendant; which said replication is in the words and figures following, to wit:

55 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

LORETTA SHROPSHIRE, Complainant,
vs.
JOHN LYLE, Defendant.

The replication of Loretta Shropshire, complainant, to the answer of John Lyle, defendant.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays
56 as in and by her said bill she hath already prayed.

(Signed) LORETTA SHROPSHIRE,
By PHILLIPS & DAY,
Her Solicitors.

(Endorsed:) Loretta Shropshire *vs.* John Lyle. Replication. Filed Jan. 5, 1885. Ed. R. Mason, clerk. Phillips & Day, solicitors for compl't.

57 And on the 21st day of October, 1885, the defendant, by his solicitors, filed in said cause a motion to dismiss for nonjoinder of parties; which said motion is in the words and figures following, to wit:

58 In the Circuit Court of the United States, Southern District of Iowa, Central Division, in the Eighth Circuit.

LORETTA SHROPSHIRE, Complainant,
vs.
JOHN LYLE, Defendant.
Motion to Dismiss for Non-Joinder of Parties Def.

Comes now the defendant and moves the court to dismiss the bill herein, and for reason of such motion states—

1st. That it appears from the bill and the undisputed proof taken by the complainant that there is a defect of parties defendant.

2nd. Because a defect of parties defendant was suggested in defendant's motion to set aside a former decree in this cause and in defendant's answer filed herein.

3rd. Because it fully appears from the record herein that one George Lyle is now and was at the commencement of this suit owner of the lands in the bill described and upon which a vendor's lien is

asked by complainant to be declared in this cause, and that
59 the said Lyle is now and was at the commencement of this
suit in possession thereof and a resident thereon, and is now and was at the time of the commencement of this suit within the jurisdiction of this court; that he is a necessary party defendant in this cause, and that there is a defect of parties defendant herein, because he has not been made a party hereto and because the complainant has failed to set down the defendant's objection for want of parties for hearing.

(Signed) COLE, McVEY & CLARK,
Solicitors for Defendant.

(Endorsed:) U. S. circuit court. Loretta Shropshire *vs.* John Lyle. Motion to dismiss for non-joinder of parties defendant. Filed Oct. 21, 1885. Ed. R. Mason, clerk. Cole, McVey & Clark, sol'rs for def.

60 And on the 13th day of November, 1885, in the record of the proceedings of said court is an entry in said cause in the words and figures following, to wit:

61 United States Circuit Court, Southern District of Iowa, October Term, 1885.

FRIDAY, *November* 13, 1885.

LORETTA SHROPSHIRE
vs.
JOHN LYLE.
} No. 2023. Eq.

This cause came on this day for hearing upon the defendant's motion to dismiss complainant's bill of complaint.

Complainant appears by Phillips and Day and defendant by Cole, McVey & Clark, and, after argument of counsel thereon, the said motion was submitted to the court, and, the court being now fully advised in the premises, it is ordered that said motion to dismiss be, and the same is hereby, overruled.

62 And on the 14th day of November, 1885, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit:

63 United States Circuit Court, Southern District of Iowa, October Term, 1885.

SATURDAY, *November* 14, 1885.

LORETTA SHROPSHIRE
vs.
JOHN LYLE.
} No. 2023. Eq.

This cause came on this day for hearing upon the defendant's motion for leave to file an amendment to the answer herein.

Complainant appears by Phillips & Day and defendant by Cole, McVey and Clark, and, after argument of counsel thereon, the said motion was submitted to the court; and, the court being now fully advised in the premises, it is ordered that said motion be and is overruled.

64 And on the 5th day of January, 1886, in the record of the proceedings of said court is an entry in said cause in the words and figures following, to wit:

65 United States Circuit Court, Southern District of Iowa.

TUESDAY, *January* 5, 1886.

LORETTA SHROPSHIRE
vs.
JOHN LYLE.
} No. 2023. Eq.

This cause came on this day for hearing. Complainant appears by Phillips & Day, defendant by Cole, McVey & Clark, and, after argument of counsel thereon, it was ordered that complainant have leave to amend the bill herein within thirty days from this date, and defendant to plead, answer, or demur to the same by March rules, and cause continued. It is further ordered that complainant have leave to withdraw the pleadings herein, the same to be returned within ten days from this date.

66 And on the 15th day of January, 1886, the complainant, by her solicitor, filed in said cause an amendment to her bill of complaint in the words and figures following, to wit:

67 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE,
Complainants,
vs.
JOHN LYLE, Defendant.
} Amendment to Bill.

Comes now the complainant Loretta and, by leave of the court for that purpose had and obtained, amends her bill of complaint heretofore filed herein by making A. C. Shropshire a party complainant to the said bill.

And the said Loretta Shropshire and A. C. Shropshire, each of whom is a citizen of the State of Iowa, brings this amendment to the bill heretofore herein filed against the defendant, John Lyle, who is a citizen of the State of Illinois; and thereupon your orators complain and say—

That they adopt and reaffirm all the allegations in the original bill of complaint herein contained except in so far as they may be inconsistent with the allegations of this amendment, and by way of amendment of and in addition to the allegations contained 68 in said original bill your orator- alleges that by inadvertence and oversight of the draughtsman of the original bill a mistake occurred in the description of a portion of the real estate involved in this litigation, and that the true description of said property is as follows, to wit:

The southeast quarter (¼) of section No. thirty-one (31), in township seventy-nine (79) north of range nineteen (19) west of the 5th P. M., Iowa; also the southwest quarter (¼) and the south half (½) of the northwest quarter (¼) and the southwest quarter (¼) of the northeast quarter (¼) and the west half (½) of the southeast quarter (¼) of section No. thirty-two (32), in township No. seventy-nine (79) north of range No. nineteen (19) west of the 5th P. M., Iowa; also a tract of land described as follows, to wit: Commencing forty-two rods south of the northeast corner of lot No. three (3), in section No. one (1) of township No. seventy-eight (78) north of range twenty (20) west of the 5th P. M., Iowa, measure thence south forty-eight (48) rods, thence west sixty-six and sixty-six one-hundredths (66.66) rods, thence north forty-eight (48) rods, thence east sixty-six and
69 sixty-six one-hundredths (66.66) rods to the place of beginning.

Your complainants further allege that Loretta Shropshire was formerly the widow of one Jesse Long, deceased, and that all of the property above described was set apart to her as her distributive share of her late husband's estate, and that in the year 1876 the complainant Loretta Shropshire became the wife of her co-complainant, A. C. Shropshire, and that of the property above described the following-described tract, to wit, the east eight and eighty-two hundredths (8.82) acres of the northeast quarter (¼) of the southeast quarter (¼) of section No. thirty-one (31), township seventy-nine (79), range nineteen (19) W., 5th P. M., Iowa, and the west thirty-one and eighteen-hundredths (31.18) acres of the northwest quarter (¼) of the southwest quarter (¼) of section No. thirty-two (32) of township seventy-nine (79) of range nineteen (19) west, 5th P. M., Iowa, became and was the homestead of your orators and continued to be occupied as such until the happening of the matters averred and set forth in the original bill of complaint herein filed.

70 Your orators allege that this action was commenced in the district court of Jasper county, Iowa, in which county the lands in controversy in this action are situated, and that the original bill of complaint was filed in the office of the clerk of the district court of said county on the 26th day of February, A. D. 1883; that afterward, to wit, on the 1st day of March, A. D. 1883, the defendant, John Lyle, executed a deed of conveyance of all the property above described to his grandson, Geo. Lyle, at the time of the conveyance aged about — years, who afterwards, to wit, on the 2nd day of March, A. D. 1883, went into the possession of said property. Your orators allege that this cause was removed to this court upon the petition of the defendant, John Lyle, on the ground that the controversy was between citizens of different States. Your orators further allege that since the removal of this cause to this court your orators have learned that the said George Lyle gives out in speeches and pretends and claims, notwithstanding the fact that the

deed of conveyance to him was not executed until the first day of
March, 1883, and he did not take possession until the second
71 day of March, 1883, and after the commencement of this
suit, that, nevertheless, he in fact made an oral contract of
purchase of said real estate and paid the consideration therefor before the commencement of this suit; all of which pretences and claims your orators are advised and informed and therefore charge to be utterly groundless, false, and untrue.

And your orators aver that the said George Lyle is not made a party to this bill for the reason that he is a citizen of the State of Iowa, of which State also your orators are citizens, and that he could not be made a party complainant without ousting the jurisdiction of this court as to the other parties.

Your orators further allege that the defendant, John Lyle, purchased and became the owner of the German savings bank mortgage, referred to in the original bill of complaint, on the 1st day of May, 1879, and that to apply upon and in payment to the defendant of the interest and principal of said mortgage and the sum of $4,250 loaned to your orator Loretta Shropshire on the 28th day of March,
1878, your orator Loretta Shropshire has advanced and paid
72 to the defendant, John Lyle, in money, property, and services,
the following sums and items, to wit:

April, 1878.	Delivered to defendant one black mare at agreed price of	$300 00
April, 1880.	Ryan Bros. paid for plaintiff to defendant	390 70
April, 1878.	Sold to the defendant one black one year old of the value of	500 00
March, 1879.	Delivered to defendant note on L. Boyd; amount, principal & interest	82 50
March, 1879.	Paid cash to the defendant	300 00
April, 1879.	Paid for shipping stock from Kentucky for defendant	110 00
Sep. 14, 1879.	J. G. Long paid for plaintiff to defendant, cash	30 00
Sept. 6, 1879.	Paid the defendant cash	400 00
March, 1879.	Paid expenses to Ft. Dodge for benefit of defendant	10 00
March, 1879.	Bought 26 head of cattle for John Lyle, the defendant, the value of which service is	16 00
March, 1879.	Defendant had the use of horses and buggy of plaintiff 14 days, value of which is	28 00
Jan. 27, 1880.	Defendant had use of one man and team one day, of the value of	5 00
73		
Mar., 1879.	Defendant had use of saddle-horse ten days, of the value of	10 00
Mar., 1880.	Plaintiff transferred to the defendant a note on Poole & Fuller of the amount of	1,950 00
Mar., 1880.	Plaintiff fed cattle on contract for defendant, of the value of	25 00

Jan.,	1881.	Plaintiff boarded William Lyle for defendant 12 weeks, of the value of	48 00
Jan.,	1881.	Plaintiff boarded Geo. Washington for defendant 18 weeks, of the value of	18 00
Jan.,	1881.	Plaintiff boarded defendant two weeks, of the value of	8 00
Jan.,	1881.	Plaintiff sold defendant eight tons of hay, of the value of	64 00
Jan.,	1881.	Plaintiff sold defendant 62 stock hogs, of the value of	496 00
Jan.,	1881.	Plaintiff sold defendant eight brood sows, of the value of	120 00
Jan.,	1881.	Defendant bred four mares to horses of plaintiff, the value of which is	100 00

And your orators allege that all the items above named were furnished for and delivered to the defendant by your orator Loretta Shropshire as payments upon the principal and interest of 74 the German savings bank mortgage aforesaid of the sum of $4,250 loaned by the defendant to the said Loretta Shropshire, and that all of said items, which are not cash items, are reasonably of the values above set out, and that your orators are equitably entitled to have all of said sums applied as credits upon the sums above named at the date of each item thereof.

Your orators further allege that some time prior to March, 1879, the defendant paid for your orator Loretta Shropshire taxes on the land in controversy amounting — $113.85, which item appears in the answer of the defendant herein as a charge of $113, and that in the month of March, 1879, the said Loretta Shropshire paid and refunded to the said John Lyle the said sum of $113.85.

Wherefore your orators pray that an account may be taken of the amount due to the defendant upon the German savings bank mortgage and upon the loan to Loretta Shropshire of the said sum of $4,250 above named; also that an account may be taken of 75 the value of the lands above named at the price agreed upon for the sale of the same to the defendant; that the defendant be decreed to pay to the said Loretta Shropshire the amount still remaining due upon the purchase of said lands; that a vendor's lien be established against and upon the lands above described for the amount found due; that a special execution issue for the sale of the lands above described or so much thereof as may be necessary to satisfy the amount decreed to complainant; that a general execution issue for the balance, or that at the option of complainant a general execution issue in the first instance without prejudice to the right to a special execution for the satisfaction of any balance which may remain uncollected, and that complainants may have such other further and general relief as equity may require.

(Signed) D. RYAN AND
PHILLIPS & DAY,
Counsel for Complainant.

STATE OF IOWA, }
Jasper County, } *ss:*

I, Loretta Shropshire, on oath say I am one of the plaintiff- in the above cause; that I have heard the above and foregoing 76 pleading read, and the matters and things therein stated are true, as I verily believe.

(Signed) LORETTA SHROPSHIRE.

Subscribed and sworn to before me and in my presence by Loretta Shropshire this 11th day of January, A. D. 1886.

(Signed) DAVID RYAN,
[SEAL.] *Notary Public, Jas. Co., Iowa.*

In the Circuit Court of the U. S., Southern Dis. of Iowa, Central Division.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE, Pl'ff-, }
vs.
JOHN LYLE, Def't. }

I, A. C. Shropshire, hereby authorize and direct that I be made a party copl'ff in the above cause with Loretta Shropshire, and hereby authorize Phillips & Day & D. Ryan to appear for me in said cause.

(Signed) ALEX. C. SHROPSHIRE.

(Endorsed:) Loretta Shropshire and A. C. Shropshire *vs.* John Lyle. Amendment to bill. Filed Jan. 15, 1886, by leave of court. Ed. R. Mason, clerk.

77 And on the 1st day of March, 1886, the defendant, by his solicitors, filed in said cause his answer to the amendment to complainant's bill; which said answer is in the words and figures following, to wit:

78 In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division, in the Eighth Circuit.

LORETTA SHROPSHIRE, Complainant, }
vs.
JOHN LYLE, Defendant. }

The answer of John Lyle, defendant, to the amendment of the bill of complain*ant* — Loretta Shropshire and A. C. Shropshire, complainants.

This defendant, now and at all times hereafter reserving and saving unto himself all benefits and advantage of exception which can or may be made out or taken to the many errors, uncertainties, and other imperfections in the said complainant's said amendment to the bill of complain*ants* contained, and for answer to so much *of* such parts thereof as this defendant is advised is material or necessary for him to make answer unto, this defendant for answer says that

he admits the complainant has made A. C. Shropshire com-
79 plainant in this case; admits that the said Loretta and the
said A. C. Shropshire are citizens of the State of Iowa, and that the defendant is a citizen of the State of Illinois. As to whether the draughtsman made a mistake in the original bill the defendant is not advised, but admits the correctness of the description of the property in the amendment to the bill; admits that the said Loretta was formerly the widow of Jesse Long, deceased; that said property was set off to her as a part of her husband's estate; admits that the said Loretta became the wife of co-complainant A. C. Shropshire in the year 1876; admits that the property described in said amendment to the bill as a homestead was the homestead of complainants, and that the same is correctly described; denies that the said homestead continued to be the homestead of complainants, or either of them, after the — day of ——, 188–; admits that this action was first commenced in Jasper county on the date set forth in the amendment to the bill; admits that defendant executed a
deed to all said property in the bill described to George Lyle
80 on or about the 1st day of March, 1886; denies that said
George Lyle went into possession of said property on the 2d of March, A. D. 1883, but avers that he went into possession thereof long prior thereto; admits that this cause was removed into the Federal court on the grounds that it was a controversy between citizens of different States; admits that the said George Lyle claims that he made a contract of purchase of all the said real estate and paid the consideration therefor before the commencement of this suit; denies that said claim of purchase on the part of said John Lyle prior to said suit is groundless; denies that it is false; denies that it is untrue, and avers that in truth and in fact the said George Lyle did purchase said farm and pay the full consideration therefor long prior to the commencement of this suit. As — the reasons why the said complainants do not make the said George Lyle a party to this cause, defendant has no knowledge other than the statement in the amendment to said bill, and admits that the motive stated in
said bill is the reason operating on the complainants for not
81 making said George Lyle a party, but denies that the same
is a good and sufficient —, either in law or in fact, but avers that the facts in said bill set forth are entirely sufficient to warrant and require the complainants under the law to make the said George Lyle a party.

Defendant admits that he purchased the said German savings bank mortgage referred to in the original bill of complaint, and avers that he purchased the same on the — day of ——, 188–, and at no other time; admits that he advanced at one time the sum of $4,250 to the complainants; denies that he loaned the same to the said complainants or either of them; denies the correctness of the account of complainants set out in their amended bill on pages 6 and 7 thereof and each item of said bill except as admitted in the original answer to defendant's bill, and avers that said account is illegally inserted in the amendment to the bill and that the same cannot be considered in this action; denies that the items named in said account as furnished or delivered to the defendant by the said Loretta Shropshire as payment upon the principal and interest to the 82 German savings bank as aforesaid — in the sum of $4,250; denies that the items other than cash are reasonably of the value set out in said account; denies that said sum named or that either or any item thereof should be so corrected. Defendant denies that the said Loretta Shropshire refunded to defendant the sum of $113.85 in the month of March, 1879, or at any other time paid by defendant on taxes. Defendant denies that complainants are entitled to any account in this cause, but avers this is a cause for the enforcement of a vendor's lien, in which no matters of account can be considered; denies that there is anything due complainants on the purchase price of said land; denies that the complainants are entitled to a vendor's lien upon the lands described or that they are entitled to any execution; denies each and every allegation in the complainants' amendment to said bill not herein specifically admitted or denied.

The defendant, further answering, says that the bill and amendment to bill is defective for want of parties. Defendant avers 83 the fact to be that George Lyle purchased the farm described in the bill and upon which a vendor's lien is sought to be established December 1st, 1882, and that he paid in full for the same during the month of December, 1882, and that the complainants were fully advised of the fact as early as the month of December, 1882, that the said George Lyle had purchased said farm; that the said George Lyle is now the owner of said farm and has continued to own it from the time of said purchase until the present time, and that no vendor's lien can be established on said farm, or any other lien, unless the said George Lyle is made a party in this cause, and that he is, under the law and the facts in the case, a necessary party to the termination of the issues in this case.

Defendant, further answering, says that the said homestead in the bill and amendment to the bill described was of at least equal value to the remainder of said farm, and that the complainant A. C. Shropshire occupied said homestead from and after the year 84 1876 to the year 1881 with the said complainant Loretta Shropshire, and up to the time of the purchase of said farm by the defendant, John Lyle, that both of said parties occupied said farm and said homestead, and that said homestead was used by both the complainants as a homestead; that said homestead was used by both the complainants as a homestead up to the date of the purchase of the same by the defendant; that about the year 1876 both the complainants removed to said farm and occupied the same and did a large business in stock-raising and farming; that while so engaged the said A. C. Shropshire did most of the business in connection with said farming operations; that he purchased stock, borrowed money, made contracts, and did all things pertaining to the business of said farm and the business of both complainants; that most of the correspondence and talk with reference to the purchase of said farm on the part of defendant was carried on with the said A. C. Shropshire; that the said A. C. Shrop-

shire has valid and substantial interest in said farm
85 up to and prior to the purchase by this defendant, and that
it was agreed in the settlement between the said parties to this cause that all indebtedness of the said A. C. Shropshire and the said Loretta Shropshire to the defendant, John Lyle, was to be credited upon the purchase price of said farm; that whatever was remaining due to the said defendant should be paid to him; that the defendant purchased both the interests of the said Loretta and the said A. C. Shropshire, amounting to the sum of $29,387.48, being $8,586.48 more than all the indebtedness of the said defendant to the said complainants on account of said farm and all other causes; that prior to the purchase of said farm the said defendant had advanced monies to said complainants for the liquidation of their indebtedness and the indebtedness of the said Loretta and for the purpose of purchasing live stock and other purposes in the following sums and amounts:

To German savings bank mortgage	10,000 00
To interest paid by John Lyle May 15, 1878	500 00
To int. on same at 6 % to Jan. 1st, 1881	80 00
86 To int. paid Nov. 1st, 1878, by John Lyle	500 00
To int. to Jan. 15th, 1881, at 6 %	65 00
To int. due on mortgage May 15, 1879	500 00
To int. on same to Jan. 1st, 1881, at 10 %	83 33
To int. due Nov. 15, 1879	500 00
To int. on same to Jan. 1st, 1881, at 10 %	58 33
To int. due May 1st, 1880	500 00
To int. on same to Jan. 1st, 1881, at 10 %	33 33
To int. due Nov. 15, 1880	500 00
To int. on same to Jan. 15, 1881	8 33
To int. due Jan. 15, 1881, on principal	166 66
To amount paid by Lyle May 1st, 1878	4,250 00
To 8 % interest on same	1,020 00
Paid by Lyle on cattle, 1877	1,420 00
4 years' interest	454 00
To one horse, 1878	600 00
To interest, 3 years	108 00
To one horse, 1879	200 00
To interest on same, 2 years	24 00
To one lot of cattle, 1877	400 00
To 3 years' interest	72 00
To one black stallion	700 00
To interest on same, 2 years	84 00
To cash	113 00
To interest	12 50
To Shropshire note	1,000 00
To interest, 10 %	825 00
To Loretta and A. C. Shropshire note	2,000 00
87 To 8 years' interest	1,600 00
To sundry items	1,000 00
Total	$29,387 48

Defendant further says that he adopts as an answer to said amendment to the bill the answer heretofore filed in this cause to the bill, in so far as the same is not inconsistent with this answer to the amendment to the bill.

The defendant by way of — states that there is due to him from the complainants, by reason of the amount of money advanced to them, the sum of $8,586.48, as shown by the accounts' and the facts in the answer and the answer to the amended bill, and he asks that an account be taken and that a decree and judgment may be rendered against the complainants for said sum.

Wherefore defendant prays that the complainants' bill and amended bill may be dismissed and that he may have judgment for the sum of $8,586.48 and costs.

(Signed) COLE, McVEY & CLARK,
Solicitors for Def't.

88 STATE OF ILLINOIS, } ss:
County of Henry, }

I, John Lyle, being first duly sworn, on oath say that I am the defendant in the above cause, and that the answer to the amendment to the bill herein filed is true of my own knowledge except as to those matters which are therein stated to be on my information and belief, and as to those I believe them to be true.

(Signed) JOHN LYLE.

Subscribed and sworn to by the said John Lyle before me this 26th day of February, A. D. 1886.

(Signed) CHAS. K. LADD,
[SEAL.] *Notary Public, of said Henry County.*

(Endorsed:) No. —. U. S. cir't court, southern div., Iowa. Loretta Shropshire *vs.* John Lyle. Answer to amendment to bill. Filed Mar. 1, 1886. Refiled July 6, 1886. Ed. R. Mason, clerk. Cole, McVey and Clark, attorneys for def'ts.

89 And on the 25th day of March, 1886, the complainant, by her solicitors, filed in said cause a replication to the answer to amendment to bill; which said replication is in the words and figures following, to wit:

90 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

LORETTA SHROPSHIRE & A. C. SHROPSHIRE, Complainants, }
vs.
JOHN LYLE, Defendant. }

The replication of Loretta Shropshire and A. C. Shropshire, complainants, to the answer of John Lyle, defendant, to the amended bill of complainants.

These replicants, saving and reserving unto themselves all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these replicants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to 91 be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these replicants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) LORETTA SHROPSHIRE &
A. C. SHROPSHIRE,
By PHILLIPS & DAY,
Their Solicitors.

(Endorsed:) Circuit court of United States, southern dist., central div'n, Iowa. Loretta Shropshire *et al. vs.* John Lyle. Replication. Filed Mar. 25, 1886. Ed. R. Mason, clerk. Phillips & Day, sol'rs for compl'ts.

92 And on the 13th day of May, 1886, in the record of the proceedings of said court is an entry in said cause in the words and figures following, to wit:

93 United States Circuit Court, Southern District of Iowa, May Term, 1886.

THURSDAY, *May* 13, 1886.

LORETTA SHROPSHIRE *et al.*
vs.
JOHN LYLE.
No. 2023. Eq.

This cause came on this day for hearing upon defendant's motion for leave to withdraw answer and to file demurrer.

Defendant appears by Cole, McVey and Clark, solicitors, and, the court being advised in the premises, it is ordered that said defendant have leave to withdraw the answer heretofore filed to the complainants' bill and have leave to file a demurrer thereto forthwith.

94 And on the 14th day of May, 1886, the defendant filed in said cause a demurrer to the amendment to complainants' bill; which said demurrer is in the words and figures following, to wit:

95 In the Circuit Court of the U. S., Southern District of Iowa, Central Division, in the Eighth Circuit.

LORETTA SHROPSHIRE & A. C. SHROPSHIRE, Complainants, *vs.* JOHN LYLE, Defendant.	Demurrer to Bill as Amended.

The demurrer of John Lyle to the bill of complaint of A. C. & Loretta Shropshire, complainants.

This defendant, by protestation, not confessing or acknowledging any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto, and for cause of demurrer showeth that the said complainants ha*th* not by their said bill as amended made such a case as entitled them in a court of equity to relief from or against this defendant touching the matters contained in the said bill or any of such matters.

And for cause of demurrer saith:

96 1st. That it appears by the said complainants' own showing by their said bill of complaint as amended that said court has no jurisdiction of or over the matter of account set out in the amendment to said bill of complaint, because the complainants have not averred the necessary facts to give a court of equity jurisdiction over matters of account.

2nd. That there is a misjoinder of causes of action in said bill of complaint as amended in that the action to enforce a vendor's lien is entirely dissimilar from the matter of account, and such causes of action cannot be joined in one and the same bill.

3rd. The bill as amended is multifarious in this, that the subject-matter of the vendor's lien is a joint claim, both complainants being interested therein, and the bill as amended shows that the complainant A. C. Shropshire has no interest in the matter of account set out in the amendment to the bill.

4th. The bill is demurable because of the non-joinder of the parties defendant. The bill as amended shows that George Lyle
97 is the owner of the land in question, resides on it, and claims to have purchased and fully paid for it a year before this suit was brought; said Lyle's deposition taken by complainant- shows this also.

5th. The bill on its face shows that this court has no jurisdiction of the case. If George Lyle is not a party no decree can be made affecting the land, because he is a necessary party to any such decree. The only decree in such case is for the payment of the purchase-money, and for this there is a plain, speedy, and adequate remedy at law, to wit, a suit at law for the purchase-money; the only ground of equity jurisdiction alleged in the bill is the enforcement of the vendor's lien; this being abandoned by failure to make the necessary parties, the remedy is at law, and the bill must be dismissed, and parties cannot be deprived of a jury trial of an alleged equity which complainants decline to test by making the necessary parties.

Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint this defendant doth demur to the 98 said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

I certify that in my opinion the foregoing demurrer of John Lyle, defendant, to the bill of complaint of Loretta Shropshire, complainant, is well founded in law and proper to be filed in the above cause.

(Signed) C. C. COLE,
Of Counsel.

(S'g'd) COLE, McVEY & CLARK,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
Southern District of Iowa.

A. H. McVey, being duly sworn, does depose and say that he is one of the solicitors for the defendant in said cause, and that the said defendant, John Lyle, is a non-resident of the State of Iowa, and that it is inconvenient to procure his affidavit to this demurrer in time to be heard promptly. Affiant further says he has read the 99 foregoing demurrer to the bill of complaint as amended in this cause, and that the same is not interposed for the purpose of delaying said cause or any proceedings therein.

(Signed) A. H. McVEY.

Sworn to before me and subscribed to in my presence this 14th day of May, A. D. 1886.

(Signed) JOHN D. JORDAN,
[SEAL.] *Notary Public, Polk County, Iowa.*

(Endorsed:) No. —. U. S. circuit court of Iowa, southern district. Loretta Shropshire *et al. vs.* John Lyle. Demurrer to bill as amended. Filed May 14, 1886, by leave of court. Ed. R. Mason, clerk. Cole, McVey & Clark, defendant's solicitors.

100 And on the 18th day of May, 1886, in the record of the proceedings of said court is an entry in said cause in the words and figures following, to wit:

101 United States Circuit Court, Southern District of Iowa, May Term, 1886.

TUESDAY, *May* 18, 1886.

LORETTA SHROPSHIRE *et al.*
vs.
JOHN LYLE.
} No. 2023. Eq.

This cause having been heretofore submitted to the court upon the defendant's demurrer to complainants' bill of complaint and the court being now fully advised in the premises, it is ordered that said demurrer be, and the same is hereby, overruled.

It is further ordered that defendant have leave to file answer herein forthwith without prejudice to the hearing of this cause.

102 And on the 21st day of May, 1886, in the record of the proceedings of said court is an entry in said cause in the words and figures following, to wit:

103 United States Circuit Court, Southern District of Iowa, May Term, 1886.

FRIDAY, *May* 21, 1886.

LORETTA SHROPSHIRE *et al.*
vs.
JOHN LYLE.
} No. 2023. Eq.

This cause came on this day for hearing, and it was ordered that defendants have leave — amend his answer herein. It was further ordered that complainants have leave to file an amendment to the bill of complaint herein on or before the June rule day, 1886.

104 And on the 27th day of May, 1886, the complainant filed in said cause his second amendment to the bill and amendment thereto in the words and figures following, to wit:

105 In the Circuit Court of the United States, Southern District of Iowa, Central Division, May Term, 1886.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Defendant.
} Second Amendment to Bill.

Comes now the complainants, Loretta Shropshire and A. C. Shropshire, and, by leave of court for that purpose had and obtained, amend their bill of complaint and the amendment thereto heretofore filed as follows, to wit, by inserting after the seventh line on the eighth page of the amendment to said bill the following:

Complainants further aver that if the proofs shall fail to establish that the various sums of money and items of property above named were advanced to the said defendant, John Lyle, technically

as payments upon the loan of four thousand two hundred and
106 fifty dollars and the German-savings bank mortgage that the
said sums of money and items of property are and constitute
in equity proper matters of set-off against the sums due the defendant
upon said loan and said German savings bank mortgage,
and that the said Loretta Shropshire is equitably entitled to have all
of said sums, with interest at the rate of six per cent. per annum from
the date of each item, deducted from the amou-t found due the defendant
on said loan and said mortgage. Complainants further
allege that as ancillary to the principal relief herein sought and as a
means to the determination of the amount due the complainant
Loretta Shropshire upon the sale of the lands above described, it is
necessary that an account be taken of the amount due upon the
loan of four thousand two hundred and fifty dollars and upon the
German savings bank mortgage, as well as the amount due the
complainant Loretta Shropshire upon the various items of property
and sums of money above named, the determination of which
questions, as appears from an inspection of the various items
107 of account, involves the examination of numerous items of
account and complicated computations of interest on many
items for variant periods of time, which examination, computation,
and determination are peculiarly and appropriately within the ordinary
jurisdiction of a court of equity and are essential and necessary
to an ascertainment of the amount due upon the purchase of
the land aforesaid.

Complainants further amend the amendment to the bill of complaint herein by inserting after the eighteenth line on the eighth page thereof and as a substitute for the remaining portion of said amendment the following, to wit:

Complainants aver tha*n* if any further or other assurance of title from these complainants to said defendant shall be found necessary by this court they are ready and willing and able and they now here offer to execute to the said defendant any such further conveyance as this court may find to be necessary to vest in the defendant all the interest, title, and estate of the said complainants in and to the lands in controversy, and to execute such further assurance of title as this court may direct.

108 Wherefore your orators pray that an account may be taken
of the amount due the defendant upon the German savings
bank mortgage and upon the loan to Loretta Shropshire of the said
sum of four thousand two hundred and fifty dollars before mentioned;
also that an account may be taken of the various sums of
money and the value of the various items of property paid by Loretta
Shropshire upon said loan and mortgage, of which the said
Loretta Shropshire may be entitled to have set-off against the amount
due the said Loretta Shropshire thereon, and that the defendant be
decreed to pay the said Loretta Shropshire the amount still remaining
due upon the purchase of said lands; that a vendor's lien be
established against and upon the lands before described for the
amounts found due; that a special execution issue for the sale of
the before-described lands or so much thereof as may be necessary

to satisfy the amount decreed to the complainant, and that in the event of said property failing to sell for enough to satisfy the amount so decreed a general execution issue for the balance unsatis-
109 fied, and that complainants may have such other and further and general relief as equity may require.

(Signed) LORETTA SHROPSHIRE AND
A. C. SHROPSHIRE,
Per D. RYAN AND
PHILLIPS & DAY, *Solicitors.*

STATE OF IOWA,
Jasper County, } *ss:*

I, Loretta Shropshire, being duly sworn, depose and say that I am one of the complainants in the foregoing amendment to bill; that I have read the said amendment and that the statements contained therein are true.

(Signed) LORETTA SHROPSHIRE.

Subscribed and sworn to before me and in my presence by Loretta Shropshire this 27th day of May, 1886.

W. O. McELROY,
[SEAL.] *Notary Public in & for Jasper Co., Iowa.*

(Endorsed:) Circuit court of United States, southern dist. of Iowa, central div'n. Loretta Shropshire *et al. vs.* John Lyle. 2nd amendment to bill. Filed May 27, 1886, by leave of court. Ed. R. Mason, clerk. Phillips & Day, for compl'ts.

110 And on the 6th day of July, 1886, the defendant filed in said cause an answer to the second amendment to the bill of complaint and amendment thereto; which said answer is in the words and figures following, to wit:

111 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

LORETTA SHROPSHIRE & A. C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE.
} Answer to Second Amendment to Bill.

Comes now the defendant herein and for answer to the second amendment to complainants' bill denies each and every allegation therein contained.

The defendant, further answering, denies that any sum or sums of money whatever should be credited on said German savings bank mortgage or on the loan, so called, of $4,250 or upon any other sums or amounts; denies that either of the sums and items of property named in complainants' amendment to the said bill should technically or otherwise be credited in favor of said complainants and against said defendant or upon said mortgage or loan. Defendant

denies that it is necessary to take an account of the amount
112 due complainants; denies that there is anything due complainants; denies that it is necessary to take an account of the amount due upon the loan of $4,250 upon the German savings bank and upon the various items of property and sums of money named in complainants' amended bill. The defendant denies that the determination of said question of account involves the examination of numerous items of account and complicated computations of interest upon various items for various periods of time; denies that said examinations, computations, and determination are peculiarly and appropriately in the ordinary jurisdiction of a court of equity; denies that they are essential or necessary to the ascertainment of the amount due on the purchase of the land aforesaid. Defendant denies that said complainants or either of them are able to execute to the defendant any further conveyance of title in said estate or of and to the lands in controversy.

Defendant, further answering, says that there is no equity in said bill or amended bill; that the questions involved are not within
the equity jurisdiction of this court, and that the complain-
113 ants are endeavoring to shape their pleadings with a view
to defeat the rights of the defendants to a trial by jury of what is in all its essential particulars a question of fact; that there are no questions of account in this case which are subject to equity jurisdiction, properly so called. Wherefore the defendant prays to be dismissed with his costs.

(Signed) COLE, McVEY & CLARK,
Solicitors for Defendant.

(Endorsed:) No. —. U. S. circuit court of Iowa. Loretta Shropshire *et al. vs.* John Lyle. Answer to second amendment to bill. Filed July 6, 1886. Ed. R. Mason, clerk. Cole, McVey & Clark, for defendants, solicitors.

114 And on the 10th day of July, 1886, the complainant filed
in said cause a replication to the answer filed July 6, 1888; which said replication is in the words and figures following, to wit:

115 In Circuit Court of the United States, Southern District of
Iowa, Central Division.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Defendant.

The replication of Loretta Shropshire and A. C. Shropshire, complainants, to the answer of John Lyle, defendant, to the second amendment to the bill of complainants.

These replicants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that they will aver and prove their said bill to be true, certain, and sufficient in

law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in
116 the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill and the amendments thereto they have already prayed.

(Signed) LORETTA SHROPSHIRE AND
A. C. SHROPSHIRE,
Per PHILLIPS & DAY, *Solicitors.*

(Endorsed:) Loretta Shropshire & A. C. Shropshire *vs.* John Lyle. Replication. Filed July 10, 1886. Ed. R. Mason, clerk.

117 And on the 11th day of November, 1886, in the record of the proceedings of said court is an entry in said cause of an interlocutory decree in the words and figures following, to wit:

118 United States Circuit Court, Southern District of Iowa, October Term, 1886.

THURSDAY, *November* 11, 1886.

A. C. SHROPSHIRE & LORETTA SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Defendant.
} No. 2023. Eq.

Interlocutory Decree.

Now, upon this 11th day of November, 1886, this cause came on to be heard, complainants appearing by Phillips & Day, their solicitors, and the defendant appearing by Cole, McVey & Clark, his solicitors, and the court, after hearing the evidence and arguments of counsel and being fully advised in the premises, orders and adjudges—

1st. That the three deeds referred to in the pleadings in this case and appearing in evidence therein and which purport to convey the lands in question be, and the same are, found to be mortgages from the complainants to and in favor of the defendant.

2nd. The court further finds the fact to be that on or about
119 the 1st day of January, 1881, the defendant, John Lyle, agreed to take and pay for the lands described, to wit, 540 acres, at the rate of $40.00 per acre, and that the said defendant agreed to pay for said lands the sum of $21,600.

The court further finds that this is a case that should be referred to a master in chancery, and it is hereby ordered and decreed that this cause be referred to C. P. Holmes, of Des Moines, Iowa, as a master in chancery in this court, to examine the evidence now on file in this cause and thereon to report to this court with all practicable expedition the following facts, to wit:

1st. The amount of the individual indebtedness of Loretta Shropshire to John Lyle on the 1st day of January, 1881, with interest thereon to said date.

2nd. The amount of the joint indebtedness of A. C. Shropshire and Loretta Shropshire to John Lyle on the 1st day of January, A. D. 1881, with interest thereon to said date.

3rd. The amount of the individual indebtedness of A. C. Shropshire to John Lyle on the 1st day of January, A. D. 1881, with interest to said date.

120 4th. To state whether or not a settlement was made on the 27th day of January, 1880, between the complainants, Loretta Shropshire and A. C. Shropshire, and the defendant, John Lyle; and, if so, the terms of said settlement.

5th. If the master shall find that there was a settlement on the 27th day of January, 1880, then to state at what price the land was counted at by the parties.

6th. The master shall find whether or not there was an understanding or agreement between the complainants and the defendant that the debts due from A. C. Shropshire to John Lyle should be paid out of the purchase price of the land and report the facts and testimony upon which the master makes said finding.

7th. The master shall further report whether there was any application made or intended by the parties of the payments made by the said Loretta Shropshire or her husband, and, if so, what that agreement or intention was. If there was no such agreement *of* intention the master shall apply the payments so made, first, toward the extinguishment of the ten-thousand-dollar mortgage.

121 It is further ordered and decreed that the said master shall report his findings in writing at this term of said court, and that said cause shall thereafter stand for further hearing upon said report and such law and facts as the court shall then determine to be in issue.

(Signed) J. M. LOVE, *Judge.*

122 And on the 14th day of December, 1886, a master's report of amount due was filed in said cause; which said report is in the words and figures following, to wit:

123 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

LORETTA SHROPSHIRE & A. C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Respondent.
} In Equity.

To the honorable judges of said court:

In pursuance of an order of reference made in the above-entitled cause, filed on the 11th day of November, 1886, I, the master in chancery named in said order, respectfully report that, having taken the oath hereto attached and fixed the 12th day of November, 1886, to hear the master so referred, I was then and there attended by Phillips & Day, solicitors for complainant-, and by Cole, McVey & Clark, solicitors for the respondents, who submitted the pleadings and evidence in said cause, with their arguments. I find—

I.

124 That the amount of the individual indebtedness of Loretta Shropshire to John Lyle on the first day of January, 1881, with interest thereon from the date of each item up to said January 1st, 1881, to be as follows:

For money advanced by John Lyle March 28th, 1878	$4,250 00
Interest thereon to January 1st, 1881, @ 6 %	703 37
For taxes of 1879, paid Jan'y 1st, 1880	110 25
Interest as above	6 34
Taxes of 1880, paid Jan'y 17th, 1881, but included	122 85
Total	$5,192 81

II.

The amount of the joint indebtedness of A. C. Shropshire and Loretta Shropshire to John Lyle on the 1st day of January, 1881, with interest from date of item to said Jan'y 1st, 1881, I find to be as follows:

Interest on mortgage to German savings —, paid May 9th, 1878	$500 00
Interest thereon to Jan'y 1st, 1881, @ 6 %	79 34
Interest on said mortgage, paid Nov. 1st, 1878	500 00
Interest on last item to Jan'y 1st, 1881, @ 6 %	65 00
Mortgage to savings bank, purchased May 1st, 1879	10,000 00
Interest paid May 1st, 1879	500 00
Interest on last item to Jan'y 1st, 1881, @ 10 %	83 33
Interest on mortgage due Nov. 1st, 1879	500 00
Interest thereon to Jan'y 1st, 1881, @ 10 %	58 33
Interest on mortgage due May 1st, 1880	500 00
Interest thereon to January 1st, 1881, @ 10 %	33 33
Amount carried for'd	$12,819 33
124½ Amount brought forward	$12,819 33
Interest on mortgage due Nov. 1st, 1880	500 00
Interest on same to Jan'y 1st, 1881	8 33
Interest on mortgage to Jan'y 1st, 1881	166 66
Total joint liability	$13,494 32

III.

The amount of the individual indebtedness of A. C. Shropshire to John Lyle on January 1st, 1881, with interest on each item from its date up to said time, I find to be as follows:

For cattle sold in spring of 1878	$1,420	00
Interest thereon from May 1st, 1878, to Jan'y 1st, 1881, @ 6 %	227	20
For one horse ("Bourbon"), sold in spring of 1878	600	00
Interest from May 1, '78, to Jan'y 1, '81, at 6 %	96	00
One horse ("Orange Boy"), sold Feb'y 1st, 1879	200	00
Interest Feb'y 1, '79, to Jan'y 1, '81, @ 6 %	22	50
Lot of fine cattle, sold Feb'y 15th, 1879	800	00
Interest to Jan'y 1st, 1881, @ 6 %	90	00
Amount paid to redeem horse, "Black Eagle"	700	00
Interest from April 15th, 1879	71	75
For 2 hogs	50	00
Interest to Jan'y 1st, 1881	8	25
Freight on cattle & horse, sold Feb'y 15th, 1879	45	00
Interest to Jan'y 1, '81	4	02
Note, A. C. & Gus. Shropshire	1,000	00
Interest from Dec. 1st, 1877, to Jan'y 1, '81	327	83
Expense of shipping horse, "Black Hawk," from Ky.	100	00
125 Interest to Jan'y 1st, 1881	16	25
Total	$5,778	80

The evidence does not satisfy my mind that it was ever intended to pay for or charge for the following items claimed by respondent, viz:

For use of two stores	$50	00
" expenses in going to & returning from Ky.	200	00
Loaned Mrs. Shropshire fare to Ky.	13	00
Two bbls. vinegar	20	00

And I find against the respondent on the claim of $200.00 for corn, as the evidence fails to establish the fact that it was used by either of the complainants.

I find that the respondent was repaid by complainants for taxes of 1878 paid by him, and I do not therefore allow the claim of $113.00.

As to the note for $2,000 executed by the complainants to W. H. Cole, I find that it was given without consideration as to Cole; that if any consideration pas*t* from John Lyle at the time of or before its execution such consideration is included in Lyle's account herein allowed, and that Lyle did not receive said note from Cole for a valuable consideration in due course of business, and the 126 respondent's claim on account thereof is therefore not allowed.

IV.

I find that payments were made by the Shropshires to Lyle as follows:

April, 1878.	Black mare	$300 00
" "	Black stallion colt	500 00
	Interest to January 1st, 1881, @ 6 %	130 00
" "	Expenses of shipping horse Black Jewel & mules from Ky.	110 00
" "	Interest to Jan'y 1st, 1881, @ 6 %	17 85
March 20, '79.	Cash	300 00
	Interest to Jan'y 1st, 1881, @ 6 %	32 00
Sept. 6th, 1879.	Cash	400 00
	Interest to Jan'y 1st, 1881, @ 6 %	31 75
May, 1880.	Paid by Ryan Bros.	18 00
	" " " "	61 25
	Interest on last 2 items to Jan'y 1, '81	2 37
June 24, '80.	Shropshires' share of money remitted by Ryan Bros	123 42
	Interest to Jan'y 1st, 1881, @ 6 %	3 70
July 10th, 1880.	Draft from Ryan Bros	132 80
	Interest to Jan'y 1st, 1881, @ 10 %	6 30
	Poole & Fuller note, dated April 1st, 1880, @ 10 %	1,700 00
	Interest to Jan'y 1st, 1881	127 50
	Expenses to Fort Dodge	10 50
	Board of Geo. Washington	72 00
	8 *tuns* of hay	64 00
	62 head stock hogs	496 00
	8 brood sows	120 00
127	Services of stallion	100 00
	Services in buying 26 head of cattle	25 00
	Keeping same	10 00
	Total payments	$4,894 44

I do not allow for the Boyd note of $82.00 nor for claim for $113.85, paid May 15, '79, for the reason that I find that said note and whatever cash was then paid were in repayment to Lyle of the taxes of 1878 paid by him and for which I did not allow him in his account.

The items of $25.00 for use of horse and buggy, $5.00 for use of team, $8.00 for board of respondent, and $16.00 for board of two men are not allowed for the reason the evidence does not satisfactor-y show any contract or intention to charge or pay therefor; and the $30.00 paid by Long is not allowed, because it appears it was money — by Lyle and retained by Shropshire out of the $400.00 paid Sept. 6th, 1879.

V.

As to the settlement claimed to have been made on the 27th day of January, 1880, I find that it is not shown that any of the payments made by the Shropshires to Lyle were considered, nor
128 was the value of the farm taken into the account. It does not appear that Lyle surrendered to the Shropshires any evidences of indebtedness held by him or that any receipts were given. At most, it seems to have been an attempt of Mr. Lyle to put in more tangable form what he claimed to be due him, but the transaction lacked so many of the elements of a completed settlement that I find none was had.

VI.

I find that there never was any agreement or understanding between the complainants and respondent that the individual indebtedness of A. C. Shropshire to the respondent should be deducted from the value or price of the land.

VII.

No application was made by either party of the payments made by the complainants to the respondent, but that the intention of the complainants was to discharge the incumberances on the lands in controversy.

129 *Summary.*

Value of land as fixed by the court:		
540 acres at $40.00 per acre		$21,600 00
Contra.		
Amount of individual indebtedness of Loretta Shropshire to Lyle	$5,192 81	
Amount of joint indebtedness of Loretta & A. C. Shropshire to Lyle	13,494 32	
Total indebtedness	$18,687 13	
Less payments	4,894 44	
		13,792 69
Balance due complainant Loretta Shropshire		$7,807 31

which draws interest at six per cent. from Jan'y 1st, 1881.

If the court shall be of opinion that the individual indebtedness of A. C. Shropshire should also be deducted the account will stand—

Balance due complainant Loretta Shropshire, as above	$7,807 31
Less individual debt of A. C. Shropshire	5,778 80
	$2,028 51

which should draw interest at six per cent. from January 1st, 1881, to date of decree.

Respectfully submitted.

(Signed) C. P. HOLMES,
Master in Chancery.

Master's fees, $250.00.
Court allowed fee of $125.00.

130 In the United States Circuit Court, Southern District of Iowa.

LORETTA SHROPSHIRE
vs.
JOHN LYLE.
} Before a Master.

STATE OF IOWA,
Polk County,
} *ss:*

I, C. P. Holmes, the duly appointed master in the above-entitled cause, do solemnly swear that as such master I will well and faithfully hear and examine said cause and make a true report thereon according to the *last* of my understanding, so help me God.

(Signed) C. P. HOLMES.

Sworn to before me and subscribed in my presence by C. P. Holmes this 12th day of November, 1886.

[SEAL.] (Signed) E. R. MASON, *Clerk.*

(Endorsed:) No. 2023. Eq. Loretta Shropshire, A. C. Schropshire *vs.* John Lyle. Report of master. Filed Dec'r 14, 1886. Ed. R. Mason, clerk.

131 And on the 20th day of December, 1886, the complainant filed in said cause a motion to confirm master's report; which said motion is in the words and figures following, to wit:

132 In Circuit Court of the United States, Southern Dist. of Iowa, Central Division.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE
vs.
JOHN LYLE.

Come now the complainants, by Phillip & Day, their solicitors, and move the court as follows:

1st. To approve and confirm the findings and report of C. P. Holmes, the master herein, filed December 14th, 1886.

2. Upon said report to enter a decree in favor of the complainant Loretta Shropshire for the sum of $7,807.31, with interest thereon from January 1st, 1881, to the date of decree at the rate of 6 per cent. per annum, and the costs of suit.

3. To establish a vendor's lien for the amount of said decree

against the property described in the amendment to complainants' bill.

(Signed) PHILLIPS & DAY,
Solicitors for Complainants.

(Endorsed:) No. 2023. Loretta & A. C. Shropshire *vs.* John Lyle. Motion for confirmation of master's report. Filed Dec. 20, 1886. Ed. R. Mason, clerk.

133 And on the 12th day of January, 1887, the defendant filed in said cause exceptions to the master's report herein; which said exceptions are in the words and figures following, to wit:

134 In the Circuit Court of the United States, Southern District of Iowa, Central Division, Eighth Circuit.

Loretta Shropshire and A. C. Shropshire, Complainants,
vs.
John Lyle, Respondent.
Exceptions to Report of Special Master C. P. Holmes.

The report of the master in chancery, C. P. Holmes, having been filed in this court heretofore, to wit, on the 14th day of December, 1886, comes now the respondent, by his counsel, Cole, McVey & Clark, and files the following exceptions to said report:

1st. The respondent excepts to the finding of the master of the amount of the individual indebtedness of Loretta Shropshire to John Lyle as shown in said report under item one.

2nd. The respondent excepts to the finding of the master as shown under the second item of said report of the amount of the general indebtedness of A. C. Shropshire and Loretta Shropshire to John Lyle on the 1st day of January, 1881, and says that the said master
erred in failing to allow and find the following items as con-
135 stituting the general indebtedness of the said complainants
in addition to those found in said report; that instead of the report of the general indebtedness of said parties being $12,819.33 the master should have found, under the evidence, said general indebtedness to be $27,500.

3rd. The respondent excepts to the third item of said master's report wherein the amount of the individual indebtedness of A. C. Shropshire to John Lyle is found to be on the 1st day of Jan., 1881, $5,778.80, and says that, in addition to the items found to be the individual indebtedness of said A. C. Shropshire, the report should have *been* found under the evidence the following additional items, and that the total indebtedness of the said A. C. Shropshire, as shown by the evidence, amounted to on the said 1st day of Jan., 1881, $8,500.

4th. The master should have found under the evidence all the items of the defendant's account to be the joint and several indebtedness of the said A. C. Shropshire and Loretta Shropshire to the defendant John Lyle, and the said master erred in failing to 136 find according to the evidence, and that under the evidence the joint and several indebtedness of the said complainants on the 1st day of Jan., 1881, amounted to $375.00.

5th. The master erred in failing to allow the following items of account in favor of the respondent as the joint indebtedness of Loretta and A. C. Shropshire:

For two stoves	$50 00
Expenses going to and returning from Kentucky	200 00
Loaned Mrs. Shropshire's fare to Kentucky	13 00
Two barrels of vinegar	20 00
For corn	200 00
For taxes paid	113 00
Loan of March 28th, 1878	4,250 00
Interest on same	943 81
German savings bank mortgage	10,000 00
Interest	3,590 05
One lot of cattle	1,420 00
Interest on same	454 00
One horse, Black Jewell	600 00
Interest	96 00
One horse, Orange Boy	200 00
Interest	22 50
Lot of fine cattle	800 00
Interest	90 00
Redemption of Black Eagle	700 00
Interest	71 75
137 Two hogs	50 00
Interest	8 25
Freight on cattle and horse	45 00
Interest	4 02
Note, A. C. Shropshire & Sons	1,000 00
Interest	327 83
Expenses shipping Black Eagle	100 00
Interest	16 25
Note, A. C. & Loretta Shropshire	2,000 00
Interest	535 00

6th. The master erred in refusing to allow for the defendant credit for a note executed by complainants to W. H. Cole for $2,000, and said master erred in finding that there was no consideration for said note and in refusing said note in said account.

7th. The master erred in allowing the following items in complainants' account:

April, 1878.	Black mare	$300 00
	Black stallion colt	500 00
	Interest to Jan. 1st, 1881, at 6 %	130 00
	Expenses shipping horses Black Jewell & mules from Ky.	100 00
	Interest to Jan. 1st, 1881, at 6 %	17 85

March 20, 1879.	Cash	$300 00
	Interest to Jan. 1st, 1881, at 6 %	32 00
138		
Sept. 6, 1879.	Cash	400 00
	Interest to Jan. 1st, 1881, at 6 %	31 75
May, 1880.	Paid by Ryan Bros.	18 00
" "	" " " "	61 25
	Interest on last two items to Jan. 1, 1881	2 37
June 24, 1880.	Shropshire's share of money remitted by Ryan Bros.	123 42
	Interest to Jan. 1st, 1881, at 6 %	3 70
July 10, 1880.	Draft from Ryan Bros.	132 80
	Interest to Jan. 1st, 1881, at 10 %	6 30
	Pool & Fuller note, dated April 1, 1880, at 10 %	1,700 00
	Interest to Jan. 1st, 1881	127 50
	Expenses Fort Dodge	10 50
	Board of Geo. Washington	72 00
	8 tons of hay	64 00
	62 head stock hogs	496 00
	8 brood sows	120 00
	Services of stallion	100 00
	Services in buying 26 head of cattle	25 00
	Keeping same	10 00
	Total payments	4,894 44

The respondent says said master erred in allowing every item of complainants' account except the Pool & Fuller note for $1,700.00, and that the master erred in allowing the accounts of said complainants to the amount of $4,894.44, and that the master should
139 have allowed no more than $1,700 of said account, to wit, said Pool & Fuller note, and no more, as the evidence clearly shows.

8th. The master erred in said report in finding that there was no settlement between the parties to this suit on the 27th day of Jan., 1880; that said master erred in finding the reasons and each of them for the rejection of said settlement, as stated in item five of his report; that the evidence clearly shows there was a full and complete settlement on said date.

9th. The master erred in finding that there never was any agreement or understanding between the complainants and the respondent that the individual indebtedness of A. C. Shropshire to respondent should be deducted from the value or price of the land.

10th. The master erred in finding that no application was made by either party of the payments made by the complainants to the respondent; that the said master erred in finding that the
140 intention of the complainants was to discharge by said payments the encumbrance on the land in controversy; that said master should have found under the evidence that said payments,

so far as made individually, were intended to discharge items of account held against complainants by respondent.

11th. The master erred in his summary in finding any balance due complainants; that under the evidence no amount is due from the defendant to the complainants, but, on the contrary, the evidence shows that the complainants are indebted to the respondent in the sum of $6,000, and the master should have so found.

12th. The master erred in finding that if the individual indebtedness of A. C. Shropshire should be deducted that there would still be due complainants $2,028.51, but, on the contrary, the evidence shows that a large balance would be due in such event to the defendant, to wit, the sum of $6,000.

141 13th. The respondent excepts to the finding of the master under each and every of the issues submitted to him for findings under the interlocutory decree of the court, because said findings and each of them are contrary to the evidence on file in said cause.

14th. The master erred in failing to find for the defendant on all the issues submitted to him by the court.

15th. The defendant excepts to the allowance of $250 for the services of the master and asks the court to fix a reasonable allowance.

(Signed) COLE, McVEY & CLARK,
Solicitors for Defendant.

January 12th, 1887.

(Endorsed:) No. —. U. S. circuit court, southern dist. of Iowa. Loretta Shropshire *et al. vs.* John Lyle. Exceptions to report of master, C. P. Holmes. Filed Jan. 12, 1887. Ed. R. Mason, clerk. Cole, McVey & Clark, solicitors for defendant.

141*a* And on the 28th day of May, 1887, in the record of the proceedings of said court is an entry in said cause in the words and figures following, to wit:

141*b* United States Circuit Court, Southern District of Iowa, May Term, 1887.

SATURDAY, *May* 28, 1887.

LORETTA SHROPSHIRE *et al.*
vs.
JOHN LYLE.
} No. 2023. Eq.

This cause came on this day for hearing upon defendant's exceptions to the master's report; and, for final hearing, complainants appears by Phillips and Day, and defendants by Cole, McVey & Clark, and, after argument of counsel thereon, this cause was submitted to the court upon the pleadings, proofs, exhibits, and exceptions to master's report, and, by consent of parties, decree to be entered as of this term.

142 And on the 29th day of June, 1887, an opinion of the court was filed in said cause; which said opinion is in the words and figures following, to wit:

143 In the United States Circuit Court in & for Southern District of Iowa, Central Division, May Term, 1887.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE
v.
JOHN LYLE.
} Equity.

Bill in equity for accounting and to establish vendor's lien.

Phillips & Day, for complainant-; Cole, McVey and Clark, for defendant.

SHIRAS, *J.:*

The bill in this cause was filed for the purpose of establishing the fact that the defendant, John Lyle, held the title to certain realty situated in Jasper county, Iowa, as security in the nature of a mortgage, the owner thereof being Loretta Shropshire, to ascertain the amount due to Lyle, and, finally, the land having in the
144 meantime been sold by consent to Lyle, to determine the amount due to Mrs. Shropshire, after deducting the sums found due to Lyle and chargeable against the land, and to establish a vendor's lien for the amount found due against the land sold.

The suit was originally brought in the district court of Jasper county, the petition being filed February 26th, 1883, and was then removed into this court.

Upon previous hearings of the cause it has been adjudged and decreed that the defendant Lyle originally held the title by way of security only; that he was accountable for the agreed price at which the land was finally sold to him, and that after deducting the amounts coming to him he was indebted to Mrs. Shropshire in the sum of —, the said amount being the unpaid part of the purchase price of said realty.

The question now presented for decision is whether complainant is entitled to a vendor's lien on the land for the amount found due.

Section 1940 of the Code of Iowa provides: "No vendor's lien for unpaid purchase-money shall be recognized or enforced in
145 any court of law or equity after a conveyance by the vendee unless such lien is reserved in conveyance, mortgage, or other instrument duly acknowledged and recorded or unless such conveyance by the vendee is made after suit brought by the vendor, his executor or assigns, to enforce such lien, &c."

Counsel for defendant claim that the land was conveyed by John Lyle to his grandson, George Lyle, before the suit was brought, and that therefore the lien is defeated.

As already stated, the petition was filed Feb'y 26th, 1883, in the county wherein the land is situated, and by the terms of section 2628 of the Code it is declared that "When a petition has been filed affecting real estate the action is pending so as to charge third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject thereof as against the plaintiff's title if the real property affected can be situated in the county where the petition is filed."

The conveyance to George Lyle was made March 1st, 1883.
146 True it is claimed that there was a verbal contract in regard to the purchase made in the December previous, but in Noyes *v.* Kramer, 54 Iowa, 22, it was held a written agreement for the sale of land did not defeat a vendor's lien, a contract to convey not being a conveyance within the meaning of the statute.

When, therefore, the suit to enforce the vendor's lien was filed, no conveyance of the realty had been executed and the conveyance to George Lyle did not affect the equity & rights of the complainant.

It is argued by counsel that the suit was not brought until after the conveyance to George Lyle, because notice upon John Lyle was not had until after date of conveyance.

Under section 2628 of the Code it is the filing of the petition and not service of notice that creates notice to third parties of the pendency of the action.

Counsel for defendant also argue that a decree establishing a vendor's lien should not be granted, because George Lyle is not a party and his interests will be affected, and that, as he is a
147 citizen of the same State as complainants, this court cannot take jurisdiction of his rights, & should, therefore, dismiss the bill. The suit was removed into this court by the defendant, who is the party now objecting to the jurisdiction. The evidence shows that George Lyle took the conveyance of the property after the suit was brought, so that he takes subject to the rights of complainants, and is not a necessary party to the suit.

If it be true that he has an equity by reason of the fact that he has paid some part of the purchase price of the property before the conveyance to him and before the bringing of this suit, there is no obstacle which would have prevented his intervening in this cause for the protection of his rights.

The fact that he is a citizen of Iowa would not prevent his intervening in a cause of which this court had already jurisdiction when the object would be to assert or protect his rights or equities in property before the court. The record shows that he is fully aware of the pendency of the suit & he has testified therein.

The present defendant is objecting to a decree establishing
148 a vendor's lien on the land on the ground that since the bringing of the suit he has conveyed the land to George Lyle, and that the latter has equities which should be protected. The latter has full knowledge of the pendency of the proceeding, but does not seek to intervene in the cause.

Under these circumstances the court cannot refuse to decree relief to complainant because George Lyle, holding under a conveyance from defendant, executed after this suit was brought, might, if he chose to assert it, be able to show an equity growing out of payments made upon the land before the suit was filed.

Complainants are therefore entitled to a decree adjudging the amount due Mrs. Shropshire from John Lyle, and declaring same to be a vendor's lien upon the realty & ordering sale of such realty for the payment of the sum found due, with interest & costs.

(Endorsed:) 2023. Eq. Loretta Shropshire *vs.* John Lyle. Opinion. Filed June 29, 1887. Ed. R. Mason, clerk.

149 And on the 29th day of June, 1887, the special master filed in the said cause a certificate in the words and figures following, to wit:

150 In the Circuit Court of the United States, Southern District of Iowa.

LORETTA SHROPSHIRE *et al.*
vs.
JOHN LYLE.

The undersigned, master in chancery to whom was referred the above-entitled cause, hereby certifies that in the hearing, examination, and preparing his report in said cause he was employed ten days.

(Signed) C. P. HOLMES,
Master in Chan.

(Endorsed:) Loretta Shropshire *vs.* John Lyle. Certificate of special master. Filed June 29, 1887. Ed. R. Mason, clerk.

151 And on the 28th day of May, 1887, in the record of the proceedings of said court is an entry of final decree in said cause in the words and figures following, to wit:

152 United States Circuit Court *Court*, Southern District of Iowa, May Term, 1887.

SATURDAY, *May* 28, 1887.

LORETTA SHROPSHIRE and ALEXANDER C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Defendant.
No. 2023. In Chancery.
Decree.

And now, on this 28th day of May, A. D. 1887, this cause came on to be heard upon the exceptions of the respondent to the report of C. P. Holmes, Esq., a special master of this court, to whom this cause was referred to ascertain and report certain matters fully set out and indicated in the interlocutory decree heretofore entered herein, the complainants appearing by Phillips & Day, their solicitors, and the said respondent appearing by Cole, McVey and Clark, his solicitors.

And the court having heard the allegations and arguments of counsel and being now fully advised in the premises, the exceptions and each of them to said master's report are overruled and the report of the master is in all things approved and confirmed.

153 It is thereupon ordered, considered, and decreed, and this court doth order, consider, and decree, that the said respodent, John Lyle, paid to the said Loretta Shropshire, complainant in this cause, on or before the 15th day of September, 1887, the sum of ten thousand eight hundred and ten dollars and forty-six cents ($10,810.46), with interest at the rate of six per cent. per annum from the 28th day of May, 1887, and the costs of suit, taxed $—, and the further sum of $125.00 for the payment of the special master for his services herein.

It is further ordered, considered, and decreed, and this court doth consider, order, and decree, that the said Loretta Shropshire do have a vendor's lien for the sum above ordered to be paid, and the same is hereby decreed and established upon and against the property in the original and amended bills of complainants set out and described, which lands are *and are* described as follows, viz: The southeast quarter (S. E. ¼) of section number thirty-one (31), in township number seventy-nine (79) north, range nineteen (19) west, of the fifth principal meridian, Iowa; also the 154 southwest quarter (S. W. ¼) and the south half of the northwest quarter (S. ½ N. W. ¼) and the southwest quarter of the northeast quarter (S. W. ½ N. E. ¼) and the west half of the southeast quarter (W. ½ S. E. ¼) of section number thirty-two (32), in township number seventy-nine (79) north, range number nineteen (19) west, of the fifth principal meridian; also a tract of land described as follows, to wit: Commencing forty-two rods south of the northeast corner of lot number three, in section number one, of township number seventy-eight north, range twenty west, of the fifth principal meridian, Iowa, measure thence south forty-eight rods; thence west sixty-six and sixty-six one-hundredths rods; thence north forty-eight rods; thence east sixty-six and sixty-six one-hundredths rods to the place of beginning, all situate in the county of Jasper, in the State of Iowa.

It is further ordered, considered, and decreed that in default of the payment herein ordered and decreed the above-described lands or so much thereof as may be necessary be sold at public sale, at the front entrance door of the United States court-house, at Des 155 Moines, in the State of Iowa aforesaid, upon due notice as required by the laws of the State of Iowa in respect to sales on execution, and that the proceeds of said sale or so much as shall be necessary for that purpose be applied by the master hereinafter named as follows, viz:

1st, to the costs of said sale; 2nd, to the costs of this suit, including the allowances made for the services of the special master aforesaid; 3rd, to the payment of debt and interest due to complainant Loretta Shropshire as herein adjusted; 4th, the residue, if any, to be paid into the depository of this court to await the further action of the court.

It is further ordered, adjudged, and decreed that George F. Henry, one of the masters of this court, be, and he is hereby, appointed to

execute this decree, and the said master, on making sale of the said premises as herein ordered and decreed, do make and execute unto the purchaser or purchasers of said lands a certificate containing a description of the property and the amount of money paid by the
purchaser, and stating that unless redemption is made within
156 one year thereafter, according to the provisions of the stat-
utes of the State of Iowa governing redemption from sales under execution, he or his heirs or assigns will be entitled to a deed for the same.

It is further ordered, adjudged, and decreed that if the said property shall not be redeemed from said sale within one year from and after the date thereof, then and in that case the said master shall execute to the purchaser or his heirs and assigns a deed conveying all the right, title, estate, and property of said respondent, John Lyle, in and to the said lands which he had on the first day of January, 1881, or has since acquired therein and every part or parcel thereof, as well as the interest of all persons claiming by, through, or under him since the 26th day of February, 1883, the date of the filing of the bill of complaint in this cause in the district court of Jasper county, Iowa, the same being the county in which said lands are situated.

It is further ordered, adjudged, and decreed that if the said prop-
erty be not redeemed from said sale within one year from the
157 date thereof as aforesaid the said respondent, John Lyle, and
all persons claiming by, through, or under him as above indicated and each of them shall be forever debarred and foreclosed from setting up any right, title, or interest, at law or in equity, in or to the said above-described lands or any part thereof, and that upon the delivery of the deed to be executed to the purchaser or purchasers as aforesaid pursuant to this decree they and each of them and all persons claiming by, through, or under them or any of them since the said filing of said bill of complainant herein do immediately surrender and deliver up to the purchaser or purchasers aforesaid the possession of the said lands and every part thereof.

It is further ordered that the said master, as soon as the said sale is made, report the same to this court for its action thereon, and that this cause do stand continued until the execution of this decree, and for such further order in the premises as may become proper.

To all of which the defendants at the time duly excepted.

(Signed) O. P. SHIRAS, *Judge.*

158 And on the 23rd day of August, 1887, the defendant filed
in said cause an application as to appeal bond; which said application is in the words and figures following, to wit:

159 In the Circuit Court of the United States, Southern District of Iowa, Central Division, Eighth Circuit.

LORETTA SHROPSHIRE *et al.*
vs.
JOHN LYLE.
} In the Matter of Application to Fix Amount of Appeal Bond.

To the Hon. J. M. Love, judge of said court:

1st. Counsel for defendant now formally ask the court to fix the amount of the appeal bond in this case.

2nd. Counsel for complainant insist that the bond should be sufficient to cover the amount found due under the decree, which is almost $11,000. We insist that this claim is wholly unwarranted in this case—

(*a*) Because this case comes strictly within Supreme Court rule 29, and is an action to enforce a lien upon real estate situated within the jurisdiction of the court; which real estate is sworn by both of the complainants to be worth not less than $30,000, and which it is admitted by the defendant is worth more than $20,000.

160 (*b*) Because this cause was brought for the purpose of enforcing a vendor's lien on said real estate, and no jurisdiction could attach for any other purpose, as is shown by the pleadings in this case.

(*c*) Because no personal judgment is asked against the defendant nor could any personal judgment be rendered against him in this action, because so far as this court is concerned it is now terminated, and no personal judgment in this case was asked, and the complainants' position is wholly untenable so far as execution for any balance is concerned.

(*d*) Because this case does not differ in its essential particulars, so far as the decree is concerned, from a decree to foreclose a mortgage, and in such case where the property is shown to be ample to pay the amount found due, as is the case here, no appeal bond is ever required or allowed under rule 29 greater in amount than enough to secure the interest and costs.

(*e*) Because it would be a great hardship and unnecessarily tie up the property of the surety in a very large sum and prevent transfers and carrying on of business to a very large extent, thus 161 unnecessarily imposing burdens to secure what is more than amply secured by the land in controversy.

3rd. We enclose herewith a copy of the decree in this case as signed by Judge Shiras, which upon inspection will be found to be simply the finding of a lien for a certain amount upon the property in controversy. We also enclose copies of the bill and amendment to the bill, showing the scope of the complainants' claim.

4th. We respectfully submit that in this case a bond for costs to accrue in the Supreme Court is all that should be required at the hands of the defendant.

Respectfully submitted.

(Signed) COLE, McVEY & CLARK,
Solicitors for Defendant.

Service by copy of the above acknowledged this 20th day of August, 1887.

(Signed) PHILLIPS & DAY,
Solicitors for Complainant-.

(Endorsed:) Shropshire *vs.* Lyle, def'ts. Application as to bond on appeal. Filed Aug. 23, 1887. Ed. R. Mason, clerk.

162 And on the 2nd day of October, 1888, the defendants filed in said cause a petition for appeal and an order allowing appeal in the words and figures following, to wit:

163 In the Circuit Court of the United States, Southern District of Iowa, Central Division, in the Eighth Circuit.

LORETTA SHROPSHIRE & A. C. SHROPSHIRE,
Complainants,
vs.
JOHN LYLE, Defendant.
} Petition for Appeal.

To the honorable the Supreme Court of the United States:

The appeal of John Lyle, the above-named defendant and appellant, respectfully shows—

That on the 26th day of February, 1883, the above-named complainant, Loretta Shropshire, filed her bill in the circuit court of Jasper county, Iowa, against the above-named defendant and appellant, and that afterwards, upon the 14th day of September, 1883, upon proceedings duly had, the said cause was removed into the circuit court of the United States in and for the southern district of Iowa, and that the transcript of the proceedings in the said Jasper circuit court were filed in said United States circuit court on the 14th day of September, 1883.

That said bill stated that the defendant was indebted to the said complainant in the sum of $9,700, which said sum was stated to be the balance due on the purchase price of the following-164 described tract of land: The southeast quarter of section No. thirty-one (31), in township seventy-nine (79) north of range nineteen (19) west of the 5th P. M., Iowa; also the southwest quarter and the south half of the northwest quarter and the southwest quarter of the northeast quarter and the west half of the southeast quarter of section No. thirty-two (32), in township No. seventy-nine (79) north of range No. nineteen (19) west of the 5th P. M., Iowa; also a tract of land described as follows, to wit: Commencing forty-two (42) rods south of the northeast corner of lot No. three (3), in section No. one (1) of township No. seventy-eight (78) north of range twenty (20) west of the 5th P. M., Iowa, measure thence south forty-eight (48) rods, thence west sixty-six and sixty-six one-hundredth-rods, thence north forty-eight (48) rods, and thence east sixty-six and sixty-six one-hundredths rods to the place of beginning.

That the said complainant sold said land to the said John Lyle for the sum of $42.50 per acre, and that a prior indebtedness to the said Lyle of $14,250, less $1,000, was to be deducted therefrom, and that the balance due on said purchase price, amounting to the said sum of $9,700, was still due and unpaid, and that deeds had been made by said complainant for the said land to the said John Lyle; that said complainant had no other security whatever for said purchase price, and the said bill asked that there be a vendor's lien declared against said land in favor of said complainant, and 165 that there be a decree and order of sale in favor of plaintiff for the said balance unless the same be paid at a short day to be named.

On the 23rd day of Dec., 1884, the defendant filed an answer in said cause denying the allegations of the bill of complainant and setting forth and denying, further, that there were any sum or sums of money due from the defendant to the complainant. The said answer further stated that the said defendant had from time to time loaned to the plaintiff large sums of money—$10,000 at one time, $4,550 at another time, and $8,000 at other times—by way of advances for stock and small loans, and that the complainant was largely indebted to the defendant.

Defendant denied that there was any vendor's lien whatever against said lands, and stated, further, that all said lands had been paid for in full; that defendant had received deeds therefor; that defendant had been in open and notorious possession of said premises for several years; that no demand had, prior to this suit, been made upon this defendant, although he was pecuniarily able to respond to any demands of the complainant, and that there was no sum or sums of money whatever due from the defendant to the complainant.

Defendant further answered that long prior to the commencement of this suit he had sold said lands to one Geo. Lyle, who had fully paid for the same and had been in possession of said 166 land from a time long prior to the beginning of this suit and is still in possession thereof.

That afterwards the said defendant, by leave of court, withdrew said answer and filed a demurrer to the plaintiff's bill, which demurrer was afterwards overruled. Whereupon complainant, on the 27th day of May, 1886, filed an amendment to her bill, making A. C. Shropshire, her husband, a party plaintiff.

Plaintiff further set up in said amendment that she had paid large sums of money from time to time on her former indebtedness to John Lyle, which payments had not been credited on the amount due to the said Lyle, and the complainant further prayed that an account might be taken of the amount of said indebtedness, and that the same might be credited upon the amount of money due to the said Lyle. Whereupon, on the 6th day of July, 1886, the defendant refiled his said answer, and also an answer to the amendment to said bill, which answer to the amendment of said bill denied each and every allegation in said amendment contained; denied that any sum or sums of money or advances whatever had been made to this defendant; denied that the said accounts and computations were peculiarly the object of equity jurisdictien. The defendant further plead that there was no equity in said bill, and that the questions presented were not within the equity jurisdiction of the court.

167 That afterwards, on the 16th day of July, 1886, the defendant filed an amendment to his answer, in which the defendant denied that there was any lien in favor of complainant on said land.

He stated that long prior to the commencement of this suit, to wit, on Sept., 1882, the defendant, John Lyle, sold all of said premises to one Geo. Lyle, who had been in continuous possession since said sale; that he has continued to be in notorious and open possession ever since. The defendant averred further that the subject-matter of this suit was not cognizable in a court of equity, but was peculiarly cognizable in a court of law.

The defendant, further answering, stated that he had purchased all the interest of Loretta and A. C. Shropshire in said farm; that he had advanced large sums to the complainants, to wit, $29,387.48, being $8,586.48 more than all the indebtedness of the said defendant to the said complainants on account of said farm and all other causes.

That the said complainants were indebted to the defendant in the various items set out in said bill on account of money, stock, and interest advanced to and for said complainants.

Upon the 10th day of July, 1886, the complainants filed a replication in said cause; that afterwards, on Nov. 11, 1886, the court entered an interlocutory decree in said cause and referred the same to a master to ascertain (1) the amount of the individual
168 indebtedness of Loretta Shropshire to John Lyle; (2) the
amount of the joint indebtedness of A. C. & Loretta Shropshire to John Lyle; (3) the amount of the individual indebtedness of A. C. Shropshire to John Lyle, and (4) to find what payments were made, if any, by Shropshire to Lyle; and thereafter, on the 14th day of Dec., 1886, the said master filed his report in said cause, in which he found that the individual indebtedness of Loretta Shropshire to John Lyle amounted to 5,192.81; that the joint indebtedness of the Shropshires to said Lyle amounted to $13,494.32; that the individual indebtedness of A. C. Shropshire amounted to 5,778.80, and that there had been paid by the Shropshires to Lyle the sum of $4,894.44, and that the purchase price of the land was $21,600; deducting the net indebtedness of $13,792.69 from the said purchase price left a balance due said Loretta Shropshire on the 1st day of Jan., 1881, of $7,807.31.

Whereupon the defendant filed exceptions to said report and to each item thereof. Afterwards, on the 29th day of June, 1887, the court entered a final decree in said cause confirming the report of the referee and finding the balance due to the complainants to be $10,810.46, with interest at the rate of six per cent. per annum from the 28th day of May, 1887.

Said decree also provided and decreed a vendor's lien to be and exist against said land and ordered that unless the said sum be paid on or before Sept. 15th, 1887, that the lands be sold and
169 the proceeds thereof be applied to the payment of costs and

the balance due the said complainant-; to all of which the defendant at the time duly excepted.

Wherefore this appellant appeals from the whole of said orders, judgments, decrees, interlocutory, and said final decree of said circuit court of the United States and respectfully prays that the decree of the said circuit court and the bill, answers, pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made dismissing said bill with costs, and for such other relief as the said Supreme Court shall deem just.

Dated August 6th, 1888.

(Signed) COLE, McVEY & CLARK,
Att'ys for Defendant and Appellant.

A. H. McVEY, *Of Counsel.*

(Endorsed:) Filed Oct. 2, 1888. Ed. R. Mason, clerk.

170 In the Circuit Court of the United States, Southern District of Iowa, Central Division, in the Eighth Circuit.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Defendant.
} Order of Appeal.

On this 6th day of August, 1888, comes now John Lyle, by Cole, McVey and Clark, his attorneys, and presents to me, a judge of said court, his appeal to the Supreme Court of the United States from the decrees and proceedings entered and had herein, and specially from the final decree entered in said cause on the 29th day of June, 1887, and all orders and proceedings in said cause; thereupon it is ordered that the appeal be allowed to said petitioner from said final decree, orders, and proceedings, and that the appeal bond be fixed at $1,500.00.

(Signed) J. M. LOVE, *Judge.*

(Endorsed:) Filed Oct. 2, 1888. Ed. R. Mason, clerk.

171 STATE OF IOWA,
Jasper County, } *ss:*

I, E. C. Bishop, constable of said county, being first duly sworn, on oath say that I received the annexed order of appeal for service on the 9th day of August, A. D. 1888, and that on the same day I personally served said order of appeal upon Loretta Shropshire and A. C. Shropshire, in Newton township, Jasper county, Iowa, by reading the said order of appeal to the said Loretta Shropshire in her presence and hearing, and by then and there delivering to her personally a true copy of said order of appeal.

And affiant further states under oath that he could not find A. C.

Shropshire, the person named in said order of appeal, in Jasper county, Iowa, that being the county of his residence, and that he therefore served said order of appeal on the said A. C. Shropshire on the 9th day of August, A. D. 1888, by reading the same to and delivering a true copy thereof to Loretta Shropshire, at the usual place of residence of the said A. C. Shropshire, in Newton township, Jasper county, Iowa, said copy being left with Loretta Shropshire, the wife of the said A. C. Shropshire, she being a member of the family of said A. C. Shropshire and a person over 14 years of age.

My fees:

Service, 2	1 00
Mileage, 2	20
Copies, 2	20
	1 40

Paid by defendant.

(Signed) E. C. BISHOP, *Constable.*

172 Subscribed and sworn to by E. C. Bishop, constable, before me and in my presence this 10th day of August, A. D. 1888.

(Signed) E. J. SALMON,
Notary Public.

(Endorsed:) In circuit court of U. S., southern district of Iowa, central division, 8th dist. Loretta Shropshire and A. C. Shropshire, complainants, *vs.* John Lyle, def't. Order of appeal. Filed Oct. 2, 1888. Ed. R. Mason, clerk.

STATE OF IOWA,
Polk County, } *ss:*

Due and legal service of the foregoing petition for appeal, the order allowing the appeal, and the citation acknowledged this 11th day of August, 1888.

(Signed) JAMES G. DAY,
Of Counsel for Complainants.

(Endorsed:) Loretta Shropshire *vs.* John Lyle. Petition for appeal and order allowing appeal, etc. Filed Oct. 2, 1888. Ed. R. Mason, clerk.

173 And on the 2nd day of October, 1888, the defendant filed an appeal bond in said cause in the words and figures following, to wit:

174 In the Supreme Court of the United States.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Defendant.
} Appeal Bond.

Know all men by these presents that we, John Lyle, James S. Clark, and D. F. Butin, are held and firmly bound unto Loretta Shropshire and A. C. Shropshire, of Jasper county, Iowa, in the sum of $1,500, to be paid to the said Loretta Shropshire and A. C. Shropshire, their executors & administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Whereas the above-named John Lyle has presented his appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States in and for the southern district of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named John Lyle shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Sealed with our seals and dated this 27th day of August, A. D. 1887.

175 (Signed) JOHN LYLE, [SEAL.]
By COLE, McVEY & CLARK, *His Counsel.*
JAMES S. CLARK. [SEAL.]
D. F. BUTIN. [SEAL.]

STATE OF IOWA,
Polk County, } *ss:*

James S. Clark and D. F. Butin, the sureties named in the above bond, being duly sworn, do on oath say that they are residents of the county of Polk; that they are freeholders and are worth more than fifteen hundred dollars over and above all just debts and liabilities existing against them and over and above their property exempt from seizure on execution.

(Signed) JAMES S. CLARK.
D. F. BUTIN.

Sworn before me this 22d day of March, 1888.
[SEAL.] (Signed) J. M. HAYES,
Notary Public, Polk Co., Iowa.

UNITED STATES OF AMERICA,
Southern District of Iowa, } *ss:*

I, E. R. Mason, clerk of U. S circuit court, do hereby certify that the within sureties are amply sufficient for the penalty of within bond.

[SEAL.] (Signed) E. R. MASON, *Clerk.*

Approved.
(Signed) J. M. LOVE, *Judge.*

176 (Endorsed:) Loretta Shropshire *vs.* John Lyle. Appeal bond. Filed Oct. 2, 1888. Ed. R. Mason, clerk.

177 And on the 2nd day of October, 1888, a citation was filed in said cause, the original of which, with the return of service thereon, is hereto attached and herewith returned, in the words and figures following, to wit:

178 In the Circuit Court of the United States, Southern District of Iowa, Central Division, in the Eighth Circuit.

LORETTA SHROPSHIRE & A. C. SHROPSHIRE, Complainants,
vs.
JOHN LYLE, Defendant.
} Citation.

The Hon. J. M. Love, one of the judges of the circuit court of the United States in and for the southern district of Iowa, to Loretta and A. C. Shr*i*pshire:

Whereas John Lyle has lately appealed to the Supreme Court of the United States from the decree lately rendered by the circuit court of the United States for the southern district of Iowa, central division, made in favor of you, the said Loretta Shropshire and A. C. Shropshire, and has filed the security as required by law, you are therefore and hereby cited to appear before the said Supreme Court, at the city of Washington, on the 8th day of October, 1888, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Des Moines, in the southern district of Iowa, eighth circuit, this 6th day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

J. M. LOVE, *Judge.*

179 STATE OF IOWA,
Jasper County, } *ss:*

I, E. C. Bishop, constable of said county, being duly sworn, on oath say that I received the annexed citation for service on the 9th day of August, A. D. 1888, and that I did on the same day personally serve said citation upon Loretta Shropshire and A. C. Shropshire, in Newton township, Jasper county, Iowa, by reading said citation to the said Loretta Shropshire in her presence and hearing and by then and there delivering to her personally a true copy of said citation.

And affiant further states under oath that he could not find A. C.

Shropshire, the person named in said citation, in Jasper county, Iowa, that being the county of his residence, and that he therefore served said citation on the said A. C. Shropshire on the 9th day of August, A. D. 1888, by reading the same to and delivering a true copy thereof to Loretta Shropshire at the usual place of residence of the said A. C. Shropshire, in Newton township, Jasper county, Iowa, said copy being left with Loretta Shropshire, the wife of the said A. C. Shropshire, she being a member of the family of said A. C. Shropshire and a person over 14 years of age.

E. C. BISHOP, *Constable.*

My fees:

Service	1 00
Copies	20
Mileage	20
	1 40

P'd by appellant.

Subscribed and sworn to by E. C. Bishop, constable, before me and in my presence this 10th day of August, A. D. 1888.

[Notarial Seal, E. J. Salmon, Iowa.]

E. J. SALMON,
Notary Public.

[Endorsed:] In the circuit court of U. S., southern dist. Iowa, central division, 8th circuit. Loretta Shropshire and A. C. Shropshire, complainants, *vs.* John Lyle, defend't. Citation.

Fees, E. C. Biship, const.:

Service (2)	1 00
Copies (2)	20
Mileage (2)	20
	$1 40

Paid by defendant.

Filed Oct. 2, 1888.

ED. R. MASON, *Clerk.*

180 *Abstract of Testimony.*

LORETTA SHROPSHIRE
vs.
JOHN LYLE.

Deposition of W. H. Cole, Taken April 2d, 1885.

Name, William H. Cole; age, forty-seven; residence, Kewanee, Illinois; practising physician. I know that John Lyle furnished Mrs. Loretta Shropshire with a considerable amount of money in 1878; the whole transaction was something over $14,000. There was a mortgage on the lands of Mrs. Shropshire for $10,000, and

there were, besides, judgments or claims amounting to something over $4.000. John Lyle assumed this mortgage and advanced money to satisfy the judgments or claims. This money was sent to Smith and Wilson, Newton, Iowa. My recollection is that John Rhinehart had bid off all the land at execution sale, excepting Mrs. Shropshire's homestead, and that Rhinehart and his wife and Mrs. Loretta Shropshire made a deed or deeds of the land, which were ab-
solute on their face, to John Lyle, with the understanding,
181 however, that Mrs. Shropshire was to have a certain time to
pay back the money; do not remember exactly the length
of time. I was at Newton, Iowa, in the month of March, 1878, in company with John Lyle. I know that he got the deed from John Rhinehart and wife for some five hundred acres of land that had belonged to Mrs. Loretta Shropshire. I do not now remember the amount of Rhinehart's claim upon the land, but some portion of the money sent to Smith & Wilson was to go — Rheinhart to satisfy or reimburse him for the amount he had paid at the execution sale and, perhaps, for taxes or some other claim. As I understood it, Rhinehart had bid the land in to protect Mrs. Shropshire, who was his sister, and was acting in her interest.

I do not know, of my own knowledge, of Mrs. L. Shropshire and her husband making a quitclaim deed to Lyle about that time, but the matter — talked over between John Lyle and Alexander Shropshire, the husband of Loretta Shropshire, in my office, in Kewanee. Mr. Lyle wanted and was to have a deed from them of the whole
premises. This deed was, however, to be only as security.
182 That was the talk between them always. About this time it
was agreed between the parties that John Lyle was to have a
contract to convey the land to me, as a sort of trustee or go-between, and that the Shropshires were to be given a certain time to pay for the land, or, in reality, to pay back the money that Lyle had advanced, as that was all that was required to be done, and the papers embodying the contract were actually drawn, but, owing to some misunderstanding of the matter afterwards, I declined to act, and they were not finally executed. It has always been my understanding that Lyle held this land as security for the repayment of his money and the interest upon it, and that the deeds were intended to be mortgages.

There was a note, said to be secured by chattel mortgage, transferred by one of the Rhineharts—I do not remember which one, but one of Mrs. Shropshire's brothers—without consideration, and the same was by me transferred to John Lyle without consideration, and, in fact, they told me that there was no consideration for the
note in the first place. It had no connection with any loan
183 Mrs. Shropshire had of John Lyle. I went to Newton, Iowa,
with Mr. Lyle at the time the said deeds were made to him
or the loan negotiated at John Lyle's request.

I do not know that I know any more about the matter than I have stated. I have not given the exact dates or amounts, as it is a long time since these matters occurred and I kept no memoranda at the time. At the time this business was going on I did all of Mr.

Lyle's corresponding with the lawyers and parties at Newton as to this matter and was familiar with it there.

Cross-examination:

I have not corresponded with David Ryan concerning this case. I had one letter from Alexander Shropshire saying that they were going to take my deposition. I did not know until to-day what the questions on behalf of the complainant would be. I had no intimations about the questions from any person. I had not seen copies of the questions propounded to me. I have not received any communication from the plaintiff or her attorneys in reference to this case.

184 In 1878 I was on terms of intimate friendship and business relations with John Lyle. I am not now on the same terms with him. I do not know that I am particularly unfriendly, but I do not regard him as I used to. We speak and talk when we meet, but I cannot say that there is the same good feeling between us as formerly.

Deposition of Robert Ryan, Taken April 1st, 1885.

Robert Ryan; lawyer; age, 42; am a lawyer. In 1878 I lived in Newton, Jasper Co., Iowa; was practising law.

In 1878 I was a member of the firm of Ryan Bros., and, as a member of said firm, representing Loretta Shropshire, I received from John Lyle $4,250, as I now recollect it, for the benefit of Loretta Shropshire.

The above money was paid under the following circumstances, which show the nature of the security Lyle received therefor: Mrs. Shropshire had been the owner of five hundred and forty acres of land, which, with the exception of the homestead, had been sold upon execution sale to John Rhinehart without redemption.

185 Mrs. Shropshire and husband made a quitclaim deed of the whole 540 acres to John Lyle. Upon this tract was, ahead, a mortgage of $10,000 to the German Savings Bank of Davenport, Iowa. The oral arrangement between Lyle and Mrs. Shropshire was that the above quitclaim deed should be made, and that thereon Lyle should take care of above mortgage and advance the sum of $4,250, for which he should hold the land as security. This sum of $4,250 was to be used to take up the amount paid by Jehu Rhinehart on execution sale and procure possession from Alexander Rhinehart, who was in possession, claim of a lease, and to pay off other specific items. Lyle would not agree to advance the $4,250 unless he could get a quitclaim deed from Jehu Rhinehart and possession of the aforesaid land of Alexander Rhinehart. When I paid out the money these requirements were complied with, so that as security for the money advanced Lyle had the quitclaim deed of Lorretta Shropshire and her husband, Jehu Rhinehart and wife, the actual possession of the land turned over to him by Alexander

186 Rhinehart. For these two last Mrs. Shropshire had paid out of the funds received from the above-mentioned Lyle loan the disbursements I made as attorney for Mrs. Shropshire.

I was present when the above arrangement was agreed to. Mr. Lyle was then at Newton, Iowa, and said to Mrs. Shropshire that he would advance the $4,250, which she could use as she pleased, but he must have the place free from any title or possession by either Alexander or Jehu Rhinehart. These were afterwards promised by Jehu and Alexander Rhinehart, and the money was sent to Ryan Bros. by Lyle to be paid out upon compliance with the conditions of settlement, and I so paid it out. Mr. Lyle afterwards said to Mrs. Shropshire, after taking up the $10,000 mortgage, that he advanced all the money to accom-odate her and help her out of trouble, but he could not get back his money, and it seemed to him that he had had only trouble for his pains. The above describe- fully all the conversations on this subject that I ever heard between John Lyle and Loretta Shropshire, as I now recollect it. The nature of the writings are above described in answer to interrogatory 3d.

187 The amount paid by Lyle to Jehu Rhinehart, as I now recollect, was about $1,200. Acting for Mrs. Shropshire, I procured Jehu Rhinehart to make a quitclaim deed to John Lyle of the property which he had held over in an execution sale, and paid above amount out of the above $4,250 received from John Lyle.

I think I have answered fully all I know about this matter, except I might say that the tract above referred to was the portion of the estate of Jesse Long set off as the dower interest therein of Loretta Shropshire.

Cross-examination:

I was acting as the attorney of Mrs. Shropshire, and so became acquainted with the above facts. David Ryan is my brother. Some time ago I received a letter from David Ryan, in which he said my evidence would probably be needed at some future time. There was nothing else on this subject, and as it was in a letter wherein our own business matters were referred to, and as I have not the letter where the deposition is being taken, I decline to attach it or a copy thereof further than it refers to this case, and that is above given.

188 This letter was written, I think, not long after this suit was begun. I never saw a copy of the interrogations to be propounded to me. The first knowledge I have had of the character of my examination was this morning, when Chas. O. Whedon showed me the original interrogations attached to the commission in pursuance whereof this deposition is taken.

I was acting as attorney for Mrs. Shropshire in the interviews and negotiations referred to.

A. C. Shropshire, Taken April 1st, 1885.

My name is A. C. Shropshire; age, 50 years. I reside in Newton, Jasper Co., Iowa, and am by occupation stock-breeder, and am the husband of plaintiff Loretta Shropshire.

I was in Kentucky. I received a letter from my wife in February, 1878, asking me to meet her in Kewanee, Illinois, to assist her in borrowing money of John Lyle to pay off some judgments she had against her land. The latter part of February I met her there and we had a talk with Lyle about borrowing money. At that time
she thought it would take about $3,500. W. H. Cole was
189 assisting Mr. Lyle and acting for him. The agreement was
made providing we would put the deed for the farm in his name; the land at that time, outside of the homestead, was advertised for sale, and I had business in Kentucky and it was agreed that my wife was to go to Newton, Jasper Co., Iowa, and have the sale postponed until Lyle should come and see for himself that there was no other claim against the land; the arrangement was that Lyle was to loan the money to my wife and have the land deeded to him to secure him for the loan of money. My wife went to Iowa and they sent me a quitclaim deed of the homestead that my wife had already signed for me to sign. I signed it and sent it back to Ryan Bros., at Newton, Iowa; it is the same deed attached by a copy to the petition in this case, marked Exhibit "B," acknowledged by me March 25th, 1878. In the latter part of April, 1878, I returned from Kentucky, and stopped at Kewanee, Illinois, to see Mr. Lyle. He told me he had been to Iowa and had concluded to loan my wife the money. He said to me at that time that Alexander Rheinhart had made a claim of $750, claiming that he had a lien on the
land; as he was in possession, he would not give it up till
190 he had that much money. Lyle also stated it would take
$4,250 to free the land of all the claims against the land, except the mortgage of $10,000 held by the German Savings Bank of Davenport, Iowa. He said he had arranged to loan the money and to take the deeds to all the 540 acres of land instead of mortgages on the said lands. He said the lands had been sold, outside of the homestead, to Jehu Rheinhart, who held the title in trust for my wife, and Jehu Rheinhart and wife, at the direction of my wife, made the deeds to Mr. John Lyle. He also said that the agreement was that he held the lands by these deeds as security for the repayment of the money. He never claimed at that time that he bought the land, and, in truth, he never talked of buying the land, nor did we offer it for sale. He then requested me to have my wife and myself make a quitclaim deed for the land, outside of the homestead, which we did. There was no consideration for this. We did it at his request, because he thought it would make him more secure. A copy of the deed is attached to the petition, marked Exhibit "E." She borrowed $4,250, and we secured him by giving a deed to the
land. We did continue to occupy the lands till Jan. 1st, 1881,
191 and I left the farm in June, 1881. We quit possession in

June, 1881, under sale of said lands to John Lyle. The land was sold to John Lyle Oct. 7, 1880, by letter, and Lyle took possession in this sale. Lyle bought the land at the price of $42.50 per acre. There is unpaid on said land the difference—540 acres of land at $42.50 per acre and — dollars paid to Lyle and the $10,000 German savings bank mortgage and $4,250 that my wife borrowed to pay off the judgments with; $1,000 that the said Lyle agreed to discount it as in the sale of the land.

Mr. Lyle in his answer set out *that* a lease. In relation to it I want to state that it was nothing but a blind, and was made for no other purpose except to protect what my wife had for Lyle's benefit and to hold off other creditors. I was present when it was made, and know that as between Mr. Lyle and ourselves that it was to account for nothing, and when the renewal or extension was written out on the lease that it was done for the same purpose as the first lease. This extension was made in 1880, and during that year we sold the farm to Mr. John Lyle.

192 I did the writing between us and Mr. Lyle. He had been at our place in the spring and summer of 1880, and we talked over the matter of selling the farm, and Lyle, he said he would try and send us a buyer. He agreed if he could get his money he would throw off $1,000.00 of his claim. This was after the writing extending the lease. A gentleman, whose name I do not recollect, came to look at the farm and claimed Mr. Lyle sent him. We priced the land at $42.50 per acre. We wrote Lyle what we had priced the land at to this man. Lyle then wrote me a letter dated Oct. 7, 1880, which is attached to my wife's deposition. We accepted this letter, or the proposition it contained, and wrote him he could have it. He then wrote and asked us when we could give him possession. We answered him Jan. 1st, 1881, provided we could stay on the farm till we could get some place to go. He answered and accepted, and we stayed on the farm till June, 1881. He came out on Jan. 1st, 1881, and took possession, and he said he had some business out West and would stop as he come back and would settle. He went away and did not come back and settle as he agreed he would, and has never settled with us as yet. The farm was
193 in a high state of cultivation in 1878, when Mr. Lyle loaned
the money; had fine buildings on it, and was worth in the market at that time $65.00 per acre. We sold in 1880 at less than it was worth, for we were not able to hold it. My wife never had any business transactions with Mr. Lyle until in Feb., 1878, and until then was but slightly acquainted with him. In the papers on file in the case Mr. Lyle claims a note of $1,000 against my wife that I suppose is a note of Augustus Shropshire of Kentucky, on which I am surety. My wife never had anything to do with that note. He also charges her with some stock, at one time $1,420, at another time $400 and some horses, at one time $600, at another time $200, and at another time $700. She did not buy or receive any of this stock. This was all a personal transaction between Mr. Lyle and myself, and she had nothing to do with it, and Lyle knew and

knows she had nothing to do with it. My wife has paid Lyle to apply on what he advanced for her as follows :

April, 1878.	To one fine black mare at agreed price	$300 00
April, 1880.	To am't paid Lyle by Ryan Bros.	390 70
April, 1880.	To one black stallion one year old	500 00
March 1st, 1879.	To one note on L. Boyd, int. and principal	82 50
194		
March, 1879.	To sale of hay	300 00
May 15, 1879.	Am't repaid to Lyle for taxes	113 85
April, 1879.	To shipping stock from Kentucky & expense	110 00
Sep. 4, 1879.	To cash, J. G. Long	30 00
Sept. 6, 1879.	To cash, September	400 00
March, 1879.	To expenses Ft. Dodge for Lyle	10 50
March, 1879.	To bringing 26 head of cattle for Lyle	25 00
March, 1879.	To boarding two men 16 days	16 00
March, 1879.	To use of horses and buggy 14 days	28 00
Jan. 27, 1880.	To one man and team	5 00
March, 1879.	To saddle horse ten days	10 00
March, 1879.	To keeping 26 head of cattle ten days	10 00
March, 1880.	To note on C. J. Poal and Fuller	1,950 00
March, 1880.	To feeding cattle on contract	25 00
Jan., 1881.	To boarding Wm. Lyle for def't 12 weeks	48 00
Jan., 1881.	To boarding Geo. Washington for def't 18 weeks	72 00
Jan., 1881.	To boarding defendant 2 weeks	8 00
Jan., 1881.	To eight tons of hay	64 00
Jan., 1881.	To 62 stock hogs	496 00
Jan., 1881.	To eight brood sows	120 00
Jan., 1881.	To breeding 4 mares to horses	100 00

No part of the above has been paid, and the said amounts and each of them is just, true, and correct.

Cross-examination:

195 The farm was sold by letter, by correspondence, as shown by my examination-in-chief. This suit was brought because Lyle failed to comply with his contract. David Ryan has no interest, only as far as he was security on certain judgment claims against her, and his attorney fees are to be paid out of it, and the balance goes to the complainant, my wife.

I have had no talk with David Ryan as to what my evidence would be in this suit. I have seen the questions asked me and read them myself. No one read to me the questions or communicated to me the substance thereof upon which I have been examined. I read them myself. I had no knowledge prior to this day of what questions would be asked me only what I read in the questions themselves.

No one has been present during any of the time that I have been undergoing examination except M. P. Doud, law partner of the notary. I know and comprehend all I have sworn to-day. The things I have sworn to are all what I know of personal knowledge.

Deposition of Alex. Rheinhart, Taken — 15, 1885.

Name, Alexander Rheinhart; age, 40; reside at Prairie City, Iowa; a farmer; acquainted with the parties to this suit; am complainant's brother. I am acquainted with the facts of a sale
196 of land under execution belonging to Mrs. Shropshire and
defendant, John Lyle, and they are the same lands deeded by Jehu Rheinhart to defendant, John Lyle, in 1878.

The arrangement between my brother Jehu and Mrs. Shropshire was that he would reconvey the land purchased by him under execution to her or any she desired to have it deeded to upon being reimbursed to the amount paid for the land purchased by him under the said execution sale.

Jehu held the title to said land for me and for *myself* (himself). The land sold under execution was sold on the judgment of The Clark County Bank *versus* Mrs. Shropshire, and in that case a stay bond was given upon which I was surety, and I was also surety on one other stay bond, and the administratrix bond, and my brother Jehu was to hold the title to said land for me to save me from loss on said bond until arrangements had been made by her, the complainant, to get money to pay out or redeem the land. Jehu and wife deeded the land to John Lyle under arrangement made by Mrs. Shropshire and Mr. Lyle, and at the request of Mrs. Shropshire, and the arrangements were that she had procured a loan of
$4,250 of Mr. Lyle, sufficient to pay off her taxes and other
197 claims to that amount, including the Clark County Bank
judgment.

As near as I can remember, I don't think I was present with the defendant, Dr. Cole, and others when the quitclaim deed by Mrs. Shropshire to John Lyle was made, dated March 20th, 1878.

I had a chattel mortgage on property belonging to my sister at that time. It was transferred in the transaction between my sister and John Lyle, but in what shape I do not now remember. I do not know that I know anything else of any benefit to either of the parties of this suit.

Cross-examination:

I am the complainant's brother. I have had no conversation with D. Ryan about my evidence.

Yesterday when I came in I asked my sister what she sent for me for, and I asked when I got here what she wanted me for, and she said in the case between her and Lyle. I had no knowledge of the substance of the interrogatories.

I did not see a copy of the questions asked me to-day on the part
of the complainant prior to my examination. All I have
198 said to-day in my examination-in-chief is from my own per-
sonal recollection. It is not a fact that what I have sworn

to to-day is made up in part from my personal knowledge and in part from hearsay. No one has been present at any time during my examination.

Deposition of Lorretta Shropshire, Taken April 1st, 1885.

My name is Loretta Shropshire; age, 42; reside at Newton, Iowa; was married in 1876 to A. C. Shropshire. I am the plaintiff in this suit and am acquainted with the defendant, John Lyle.

I was the owner of the southeast qr. of sec. 31, and the southwest qr. of sec. 32, and the south half of the north qr. of sec. 32, and the west half of the southeast qr. of sec. 32, all in t'p 79, range 19 west, 5th P.M., Iowa, and inherited them as the wife of Jesse Long, deceased. I mortgaged said lands to the German Savings Bank of Davenport, Iowa, for $10,000 *in* the month of May, 1877. I made a quitclaim deed to this land to John Lyle *in* March 20th, 1878. I have not the original in my possession. I sent it to this defendant in this 199 case. I had a judgment against me and my land was advertised for sale. I went to Kewanee in the month of Feb., 1878, to see John Lyle, and met my husband there to see if I could borrow money to pay off those judgments against my land, and while there I told Mr. Lyle that I had given a mortgage of $10,000 in favor of the German savings bank, Davenport, Iowa, and that I wanted him to take up this mortgage and loan me enough more to pay off these judgments against me, to which Lyle, the defendant, agreed, provided there were no other claims against my lands, and he agreed to come over and see for himself, and I came home to stop the sale of my land. My brother, Alexander Rheinhart, who was on my stay bond, had no faith in my borrowing the money, and said he would go on and have the land sold, and that if I would get the money and pay him back what he had paid out and release him he would get my other brother, Jehu Rheinhart, to bid the land in and hold it till I could borrow the money, and that he would deed the land to me or whoever I might wish. Under this 200 arrangement the land was sold to my brother, Jehu Rheinhart. John Lyle, the defendant, Dr. W. H. Cole, -- James K. Blish, attorney at Kewanee, Ill., came over to Newton, and in Ryan Bros.' office, in the presence of Ryan Bros., Dr. Cole, James K. Blish, and the defendant and myself, this business was talked over, and in the presence of the above-named gentlemen Lyle agreed to loan me sufficient money to pay off the claims against the land, aside from the $10,000 mortgage, to the amount of $3,500, and he was to be secured by a quitclaim deed to my homestead and by one from Jehu Rheinhart for the lands he bought at the sheriff's sale, and that he, Lyle, would take up the $10,000 and give me five years to pay him, and while in Ryan Bros.' office deeds were drawn up and held by Ryan Bros. until the money was sent to said Ryan Bros. My husband was with me at Kewanee, Ill., and was present when the arrangements and negotiations were had, and Dr. W. H. Cole was present. The lands were sold under execution at sheriff's sale, and my brother, Jehu Rheinhart, bought it in

Feb., 1878, and I made arrangements with my brother,
201 the purchaser of the land, that if Lyle would loan me
me the money he, my brother, would transfer the deeds
to Lyle to secure him, Lyle, for the money loaned. The purchaser at the execution sale was my brother and he held the lands for me under this arrangement, that if Lyle loaned me the money that he was to deed the land to me or whoever I might wish. The deed was made by Jehu Rheinhart and wife to John Lyle, under an arrangement I had made with my brother to transfer the money advanced to me subject to the $10,000 mortgage to the German Savings Bank of Davenport, Iowa, held against my land. These deeds were held by Ryan Bros. till Lyle complied by sending the money, which he did, and then the deeds were sent to him, Lyle, the defendant. The deed by Jehu Rheinhart was made under my direction by previous arrangements I had made with my brother, that he should deed the lands to me or whoever I wished when the claims were satisfied. The deed was made to secure John Lyle for the money he was to advance.

The deed of myself and husband to John Lyle, March 20th,
202 1878, was made under the circumstances that he was to
loan me money, as stated, before we was to give him a quit-
claim deed to the homestead to secure him. The same is attached to my original petition in this case, marked "Exhibit D." The consideration for this deed was the loan of this money, and the deed covered our homestead.

Lyle was not satisfied with the deed made to him by my brother, and asked us to give a quitclaim deed to doubly secure him *him* for the money advanced. No consideration was paid. I have not the original, but a copy thereof is attached to my petition herein, marked Exhibit "E." These were made to secure him for the money advanced, and that was the understanding. We resided on these lands at the time the deeds were made, and continued to reside there till June, 1881. We quit possession of said lands in June, 1881.

Lyle advised me frequently to sell the lands and not be paying so much interest. He said that if I would sell the lands so that he could get his money he would throw off $1,000 of his claim. I told him if he would send me a buyer I would sell. In the summer of 1879 he, Lyle, then sent a man by the name of Prichard.
We priced the land to him at $45.00 per acre, and he
203 offered us $42.50 per acre. Lyle then wrote us if we would
sell the land that he would throw off $1,000 of his claim. I
here hand this letter from Lyle to the notary and make it a part of my answer to this interrogatory. (Letter handed to the notary, marked Exhibit "C," and made a part hereof.) In the fall of 1880 Lyle sent another man, whose name I do not remember, and we priced the land to him at $42.50 per acre. He asked us what kind of payments we wanted. I told him I wanted what would be coming to me in cash down and he could fix what would be coming to Lyle with Lyle and let us know through Lyle whether he would take it or not. We wrote Lyle the man's offer—$42.50 per acre,

Some time after he went home, in Oct., 1880, we received a letter from Lyle saying he had not seen the man who was going to buy the land; that we might consider it sold, for if this man did not take it he, Lyle, would, and put Will. on it. This letter I hand to the notary to be attached to this deposition as a part of this answer. (Letter handed to the notary, marked Exhibit "D," and made a part hereof.) We accepted this offer, and he then wrote us
204 when we could give possession. I cannot attach this letter, as it is lost. We asked until January 1st, till we could get some place to go to. He answered and accepted. The 1st of Jan., 1881, he came out and took possession, and said he would go and come back and we would settle. He went away and never did come back. We sold 540 acres at $42.50 per acre and received nothing in return as yet. Mr. Lyle has not as yet paid the balance due on such sale after deducting the money advanced.

Lyle advanced first $42.50; then paid off the $10,000 held by the German Savings Bank of Davenport, Iowa, and the deed- were made as security for the money advanced by him. There was no other consideration for these deeds *lands*. I have seen a copy of the answer made by the defendant in this case, and there are some things I have not already stated that I now wish to state that I think material. The 540 acres of land involved in this case is in fine state of cultivation. Splendid buildings all in fine repair from 1878 to 1880. The buildings cost $21,000 and were none of them more than seven years old. The 540 acres was inclosed with a
205 fine board fence built in a most substantial manner, divided into suitable fields with the same kind of a fence. It was fitted for and used for growing and breeding short-horned cattle, and was worth much more than $42.50 per acre, but our embarrassed circumstances compelled us to make the sacrifice. In 1878, when Lyle loaned us the money, the actual value of the land was $65.00 per acre. Mr. Lyle up to this time was comparatively a stranger to me, and it is not true that I took advantage of his old age and feebleness in his old days to exact money from him. He was not in feeble mind or health, but was a strong, vigorous man; but, on the contrary, Lyle exacted from me to relieve me from my temporary embarrassment. He exacted and required a title of this 540 acres of land placed in him by the deeds set out in my petition and executed as stated in my petition. At the time these deeds were executed there was no talk nor understanding that I nor my husband were making an absolute sale of this land to Lyle, or did Lyle so understand it. We talked about nothing but the loan, the borrowing of the money, and giving the deeds for security,
206 and this was fairly talked between us and understood and agreed upon. I commenced at first negotiating with him at Kewanee, Ill., at his home. He would do nothing till he would come personally and see what there was against the land. After a good deal of talk he agreed to loan me some money. After he had gone home my brother, Alexander Rheinhart, was living in the house with me, and made a claim that he had rented the farm for the year 1878, and demanded $750 in addition to the money I was

borrowing from Lyle to pay off judgments. Lyle at first declined to loan me $750, and the negotiations were nearly broken off, but he finally concluded to let me have $4,250, which included the $750 to my brother, Alexander Rheinhart, for the surrender of the lease that my brother had held. It was agreed and understood that we were to remain in possession, and that we were to pay him as fast as we could, and we did pay him, to apply as interest on the money that he loaned us and what he paid on the German savings bank mortgage, paid by Ryan Bros. in the first part of 1880, the sum of $390.70. This should apply in payment of interest and principal of what Lyle loaned to
207 me and the German savings bank mortgage. When Lyle
loaned me this money in 1878 it was then not known whether the German savings bank, Davenport, Iowa, would take the money or not before it was due, and when we got the loan from Lyle there was no arrangement for the payment of the mortgage with the bank, and it was not until 1879 that the arrangement was made that the German savings bank mortgage should be transferred to Lyle, and in May, 1879, this mortgage was assigned to Lyle with my approval of the arrang-ment. The assignment was made May 2nd, 1879. A copy of the same is attached to the affidavit of C. K. Ladd in support of the motion to vacate the decree in this case and is marked Exhibit "Y," and he held this as a claim against me and against the farm. We had so much confidence in Mr. Lyle doing as he agreed that we placed ourselves in his power, as already indicated. Mr. Lyle made some claims against me in his answer and in the affidavit of Mr. Ladd that I want to answer. He claims against me a note of $1,000 and interest on the same—the sum of $377. I never gave such a note or agreed to be responsible for the same in
208 any way. He also charges me for $1,420 for cattle, $600.00
for horse, and in other items $200 and $400 for a black stallion. I never bought of him or did I authorize any one to buy *it* for me or Mr. Lyle at any time any horses or cattle. He charges me with $113. This was money he paid for taxes in 1879 on this land and brought to me the receipt. The true amount should be $113.85. This I paid to him and he gave me the tax receipt, which I hand to the notary and make a part hereof. (Tax receipt handed to the notary, marked Exhibit "E," and made a part hereof.) The defendant alleges in his answer that he furnished me money to stock the farm, and continued to do this to the end of the year 1877 or the beginning of the year 1878. I never had any business transactions with him as stated. The first business transaction with him and the only one was the borrowing of this money to the amount of $4,250. Defendant alleges in his answer that on the 27th day of Jan., 1880, he made a final settlement with me. This is not true. All there is of this — on the first of March, 1879, to carry out the plan we had adopted, we made to Lyle a lease, but it was understood and agreed between us that it was for no other purpose
209 but to protect me against my other creditors and enable me
to pay whatever we could on Mr. Lyle's claim. In Jan., 1880, before the year was up, for the *for the* purpose of extending

this same protection, — had his attorney put a writing upon the back of this lease, which we all signed—Mr. Lyle, my husband, and myself. I hand the notary a copy of the lease, with the writing upon the back, which was given to me, which is to be attached to this answer. (Copy referred to handed to the notary, marked Exhibit "F," and made a part hereof.)

We did not then have any accounting or settlement. Lyle did not surrender up to me my notes and my receipts. He then held and still holds the notes of the German savings bank and the mortgage. We did not occupy under the lease nor by virtue of it. July 19th, 1880, he wrote us a card, which I hand to the notary to be attached as a part of this answer, and on July 30, '79, he wrote a card, which I hand to the notary to be made a part hereof. Oct. 18th, 1880, he wrote us a card, which I hand to the notary to be attached — my answers. (Cards handed to the notary and marked Exhibits "G," "H," & "I" and made apart hereof.)

210 In 1879, 9th and 13th, he wrote us a letter, which I hand to the notary to be attached and made a part of the answer. (Letter handed the notary marked Exhibit "J.") The proposition contained in the letter marked Exhibit "D" hereof we accepted and surrendered possession under it. He came out in Jan., 1881, and took possession, and he then said that he had business out West and would come back and we would settle, but he did not come back as he agreed. I have never been able to get a settlement and — still owes us the difference in the price of the land, 540 acres of land at $42.50 per acre, and what we have paid him and the German savings bank mortgage and the sum of $42.50.

In April, 1879, I sold to John Lyle a fine black mare, Kitty, at	$300 00
And black stallion for	500 00
On March 5th, 1879, I let him have a note on Boyd, principal and interest	82 50
On March 20, 1879, paid him cash	300 00
May 1st, 1879, paid Lyle for taxes paid on this land	113 85
For shipping mules and stallion from Kentucky	90 00
Furnishing men to take care of the same	20 00
Sept. 4, 1879, cash paid by J. Long for me	30 00
Sept. 6, 1879	400 00
Expenses going to Ft. Dodge	10 00
211 March, 1880, my husband buying cattle for Lyle, 26 head	25 00
For the use of horses and buggy, 14 days	28 00
Boarding two men 16 days	16 00
For one hand taking cattle to Union county, 10 days	10 00
Keeping 26 cattle 10 days	10 00
For one man and team two days, Jan. 27th, 1880	5 00
One note on A. J. Pool & Fuller, March, 1880, delivered by us to the said Lyle	1,950 00
March, 1880, selling cattle	25 00
Jan., 1881, boarding Will 12 weeks, washing included	48 00

Jan., 1881, to two weeks' board of John Lyle	$8 00
To boarding Lyle's hired man 18 weeks @ 4.00 per week	72 00
For eight tons of hay @ 8.00 per ton	64 00
62 stock hogs @ 8.00 per head	496 00
For eight brood sows at $15.00 per head	120 00
To breeding four mares to stallion Eagle	100 00
And paid by Ryan Bros. that ought to be applied to my account	390 70

All of the above items against the said Lyle are just, true, and correct, and the same are wholly unpaid and would be and are a matter to be adjusted in our settlement.

Cross-examination of L. SHROPSHIRE:

I have seen copies of the questions asked me before to-day. They
were shown to me by Mr. Ryan. I knew what questions
212 would be asked me to-day on the part of the complainant
prior to my examination. D. Ryan has no interest in this
suit, only for the benefit of my sureties, for whom he is attorney, and he himself is on my administratrix bond. I assigned to him the decree rendered by default because he was one of my sureties and to pay him attorney's fees in this case. I brought this suit at my own instance. I have agreed to give D. Ryan just what pays the attorney's fees and settles up. No specific amount was agreed upon. I sold the lands to John Lyle in the fall of 1880. It was sold by letters, as was shown by me — examination-in-chief. I made my proposition by mail, and he accepted it.

Int. 10. Where is the contract of sale? Attach the same or copy of it.

Ans. Exhibit "D" to my examination-in-chief, and the fact of his taking possession is all there is to it.

Int. 11. Have you not often said that John Lyle was the best friend you ever had?

Ans. At first I thought he was a friend in a business way, but
ended an enemy. I did not say so.
213 I was not influenced to bring this suit by some one outside
of my family. When I moved from said farm I knew John
Lyle owed me the difference between the price to be paid by him for the farm and what I owed him. I relied on his honor as a man to come up and settle as per agreement, and had I not thought he would I would not have given possession. I never thought of asking persons to redeem said lands for me since I removed from the farm. I have answered all these questions from my own personal knowledge, and I know of my own personal knowledge that all I have stated is true.

No one but the notary was present during my examination. I know the nature of an oath. It is the nature of an oath to bind one to speak nothing but the truth.

No one made any suggestions to enable me to make answer to the 18 questions.

I began negotiations with Mr. Lyle in Feb., 1878, and dealt with him only in regard to the loan of $4,250. I wish it understood that I had no transactions with Lyle in any manner whatever except the loaning of this $4,250. I bought no stock or anything else from him.

214 Exhibits Attached to the Deposition of L. Shropshire.

Exhibit "F."

This is a lease in usual form of the premises in question from John Lyle to Loretta and Alexander Shropshire from the 1st day of March, 1879, to the 1st day of March, 1880, for the rental of $1,700.00, payable March 1st, 1880.

Upon the back of this lease is a writing as follows:

It is hereby agreed by and between the parties to the within lease that the terms thereof are extended one year from March first next upon the following conditions, to wit: The rent herein named is to be paid promptly as herein agreed; and, further, the said tenants are to pay to said John Lyle on March first next the sum of fifteen hundred dollars, and on the first day of June next the further sum of fifteen hundred dollars, and on the first day of September next the further sum of fifteen hundred dollars; and it is here expressly agreed that if any of the said payments are not made promptly on the day named, then and in that case the within lease shall terminate and the said Lyle shall immediately at his
215 election take possession of the within-described premises without any notice to said tenants whatever and retain and hold all crops that may be growing or on said premises, and the said tenants agree to surrender said premises to said Lyle without any legal process whatever, hereby waiving all legal process or notice and agreeing to put said Lyle immediately into possession as aforesaid.

Witness our hands and seals this 27th day of January, A. D. 1880.

A. C. SHROPSHIRE. [SEAL.]
LORETTA SHROPSHIRE. [SEAL.]
JOHN LYLE. [SEAL.]

In presence of—
CHAS. K. LADD.

Exhibit "C."

"Kewanee, Ill., *9th, 20th*, 1879.

Mr. A. C. Shropshire.

Dear Sir: I wrote to you some weeks ago about the sale of that land, saying there was an offer of $42.50 per acre and advising you to sell it, but I have not heard a word from you. I want to say now that if you will sell it so I can get my money I will throw
216 off one thousand dollars of my claim. You wanted me to sell it for $40.00 in the spring, and now here is an offer of $42.50. I want you to answer right away and let me know what you will do.

Yours, &c., JOHN LYLE.

P. S.—If this trade is not made now it cannot be made at all, as the parties will buy yours or buy land of their brother."

Exhibit "D."

"Kewanee, Ill., *Oct.* 7, 1880.

Mr. A. C. Shropshire.

Dear Sir: I have not seen the man who was going to buy the farm, but you may consider it a sale, for if he does not take it I will take it myself and put Will on it. If you will come here and we can settle I will let you have Black Jewell and take stock for him. If Will comes he will want to buy hogs, hay, and corn. Write and let me know how this would suit you and when you can come. As far as staying there, you could stay until February, an-way, and if Will comes, then you could stay longer.

Yours truly, JOHN LYLE."

217 Exhibit "E" is a tax receipt of the treasurer of Jasper county, dated May 1st, 1879, for $113.85 for the taxes of 1878 on the land in controversy.

218 Exhibit F.

This indenture, made this first day of March, 1879, between John Lyle, of Kewanee, Illinois, party of the first part, and Loretta Shropshire and Alexander C. Shropshire, her husband, of Jasper county, Iowa, party of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants of the said party of the second part hereinafter set forth, do by these presents lease to the said party of the second part the following-described property, to wit:

The southeast quarter of section thirty-one (31); also the southwest quarter of section thirty-two (32); also the south half of the northwest quarter of said section thirty-two (32); also the southwest quarter of the northeast quarter and the west half of the southeast quarter of said section thirty-two, all in township seventy-nine (79) north, range nineteen west, of the 5th principal meridian, in Jasper county and State of Iowa; also the following tract of land:

Beginning at a point forty-two rods south of the northeast corner of lot No. three (3), in section one (1), in township seventy-eight (78) north, range twenty-one (21) west, of the fifth principal meridian, in county and State aforesaid, and running thence south forty-eight (48) rods, thence west sixty-six and $\frac{66}{100}$ rods, thence north forty-eight (48) rods, thence east to the place of beginning: 219

To have and to hold the same to the said party of the second part from the first day of March, 1879, to the first day of March, 1880.

And the said party of the second part, in consideration of the leasing of the premises as above set forth, covenants and agrees with the party of the first part to pay the said party of the second part as rent for the same the sum of seventeen hundred dollars, payable as follows, to wit, on the first day of March, A. D. 1880.

The said party of the second part further covenants with the said party of the first part that at the expiration of the time mentioned in this lease peaceable possession of the said premises shall be given to said party of the first part in as good condition as they now are, the usual wear, inevitable accidents and loss by fire excepted, and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above promised to be paid the said party of the first part may, at his election, either distrain for said rent due or declare this lease at an end and recover possession as if the same was held by forcible detainer, 220 the said party of the second part hereby waiving any notice of such election or any demand for the possession of said premises.

And it is further covenanted and agreed between the parties aforesaid the covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties of this lease.

Witness the hands and seals of the parties aforesaid.

(Signed) JOHN LYLE. [SEAL.]

* * * * *

(The original is so torn that other signatures are missing.)

(Copy.)

"It is hereby agreed by and between the parties to the within lease that the terms thereof are extended one year from March first next upon the following conditions, to wit: The rent herein named is to be paid promptly as herein agreed; and, further, the said tenants are to pay to said John Lyle on March first next the sum of fifteen hundred dollars, and on the first day of June next the further sum of fifteen — dollars, and on the first day of September next the further sum of fifteen hundred dollars; and it is hereby expressly agreed that if any of the said payments are not 221 made promptly on the day named, then in that case the within lease shall terminate and the said Lyle shall immediately, at his election, take possession of the within-described premises without any notice to said tenants whatever and retain and hold all crops that may be growing or on said premises; and the said tenants agree to surrender said premises to said Lyle without any legal process whatever, hereby waiving all legal process or notice and agreeing to put said Lyle immediately into possession as aforesaid.

Witness our hands and seals this 27th day of January, A. D. 1880.

A. C. SHROPSHIRE. [SEAL.]
LORETTA SHROPSHIRE. [SEAL.]
JOHN LYLE. [SEAL.]

In presence of—
CHAS. K. LADD."

(Endorsed:) Lease, John Lyle to Loretta Shropshire, from March, 1879, to March, 1880.

222 Exhibit "G" is a postal card, as follows:

"KEWANEE, ILL., *July* 19*th*, 1880.

A. C. Shropshire, Monroe, Iowa.

DEAR SIR: Ryan Bros. have written me asking the lowest price for the farm. I would like to have you go over and tell them what they can get it for. I have written to them saying that you would call on them and let them know. If you can come within $1,000.00 of trading I will make it up—same as I offered to last year.

Yours truly, JOHN LYLE."

Exhibit "H" is a postal card, as follows:

"KEWANEE, ILL., 7*th*, 30*th*, 1879 (*July* 30*th*, 1879).

Alexander Shropshire, Esq., Monroe, Iowa.

DEAR SIR: I write to let you know that there will be a man out there by the name of Henry Pritchard, Sr., to look at your place. He will be there probably next Monday. He has advertised his place for sale here. I would sell to him if I possibly could. If they take a notion to buy I will come out with them.

Yours truly, JOHN LYLE."

223 Exhibit "I" is a postal card, as follows:

"KEWANEE, ILL., *Oct.* 18*th*, 1880.

A. C. Shropshire, Monroe, Iowa.

DEAR SIR: I wrote some ten days ago to you asking when you could come here and we would settle, but have heard nothing from you. Now, please let me know when you could come.

Yours truly, JOHN LYLE.
P."

Exhibit "J" is a letter, as follows:

"KEWANEE, ILL., 9*th*, 13*th*, 1879.

Mr. A. C. Shropshire.

DEAR SIR: Mr. Sharp says that he thinks the Prichards will give ($42.50) forty-two dollars and fifty cents per acre for the farm, and wants you to answer right away whether you will take it or not. If Col. Swope don't pay the money I will have to sell it. I think it would be best for you to sell it at the $42.50. Prichard was here to see me yesterday, but I was not at home, as I only got back this morning.

Yours truly, JOHN LYLE.
P.

P. S.—Write me by return mail. How did you get along at the fair?"

224 *Deposition of Jehu Rheinhart, Taken April 2d,* 1885.

Name, Jehu Rheinhart; age, 52 years; residence, Fairview t'p, Jasper county, Iowa; a farmer; know the parties to this suit; am complainant's brother.

Int. 2. State whether or not you were the purchaser of a tract of land in 1878 at an execution sale against your sister, Loretta Shropshire, and at whose request and under what arrangement did you purchase the same.

Ans. I purchased a tract of land for complainant, and I did so to secure my brother that was on her bond. The arrangement was that I was to give up the land whenever she got a loan of money to her. I conveyed this land to John Lyle at her request. I do not know when. I have not the original and cannot attach a copy to my answer. I did not receive the consideration myself, except the money I advanced and the taxes I had paid, and Ryan Bros. paid me that.

My sister was back there, and he (defendant) could not raise the money. I bid off the land to save my brother. That's all I
225 know, and don't know of defendant's knowing anything about
it. I never spoke to Lyle, and through all the dealings Ryan Bros. acted for Mrs. Shropshire.

Cross-examination:

I have had no talk with D. Ryan as to what my testimony would be in this case. I did not see the questions asked me to-day in this case on behalf of the complainant before I testified in this case.

Mr. Doud, the notary's partner, is the only one who has been present during my examination.

Deposition of D. Ryan, Taken April 2d, 1885.

Name is D. Ryan; reside in Newton, Iowa; age, 45; attorney-at-law, and was in 1878, and resided in Newton.

In March or February, 1878, Mrs. Shropshire was the execution defendant in some cases in the Federal court of this district, and her lands described in the petition in this case had been levied upon, except the homestead, to satisfy the same or one of the judgments. I think it was on the 19th day of February, or about that, in 1878, that the lands were to be sold. Her brother, Alex-
226 ander Rheinhart, was her surety on this judgment, which had
been stayed. She endeavored to have the sale postponed till Mr. Lyle, as she claimed, could come from Kewanee, Illinois, to Iowa. Her brother, Alexander Rheinhart, declined to make an arrangement of adjournment or to agree thereto, but insisted on the sale proceeding. It was then arranged between Mrs. Shropshire and Alexander, who was the stay surety, that Jehu Rhinehart, another brother, should bid the amount of the judgment and satisfy the same and hold the land for Mrs. Shropshire and make a deed of the

land so bought to her when she should procure her loan and pay of or to him the sum of money that he bid and paid, with ten per cent. interest on the same from the time paid up to the time it was repaid. I was then a member of the firm of Ryan Bros., and we were Mrs. Shropshire's attorneys. John Rhinehart bought in the land described in the petition, except the homestead, under this arrangement, as I have already stated. Shortly after this time one W. H. Cole, for John Lyle, began corresponding with us.

227 The first correspondence that I know of was March 7th, 1878. He wrote a card relating to this business, which I hand to the notary to be attached as part of my answer hereto. (Card marked Exhibit "O.")

On March 8th, 1878, I received a letter, which I hand to the notary to be attached to this my deposition.

On March 16th, 1878, I received a postal card, which I hand the notary to be attached to this answer; also on March —, 1878, we also received a telegram, which I hand the notary to be made a part of my answer. The above are marked Exhibits "P," "Q," and "R."

About the 20th day of March, 1878, the defendant and Dr. Cole and Mr. Ladd came to Newton, Iowa. Mr. Lyle stated at that time that Mr. Cole was a friend of his, and was acting for him and assisting in the business.

Negotiations commenced at once between Mrs. Shropshire, who was then present, and Mr. Lyle. Mr. Lyle brought his attorney with him from Ill. and we represented Mrs. Shropshire. I was present during all the negotiations and participated in them. It was fully explained to Mr. Lyle that John Rheinhart held 228 the title to this land outside of the homestead for Mrs. Shropshire, and that he would convey the land to her or whom she might direct when he had received the amount of money he had paid in buying the land at sheriff's sale. The amount of his bid was $1,001.25; he had also paid taxes on the land—$195.65—and when this money was refunded to him, with ten per cent., he would make the deed as she might direct. Mr. Lyle had seen the farm; we also examined the abstract of titles, and he agreed then to loan her sufficient money to remove the incumbrances except a mortgage to the German Savings Bank of Davenport, Iowa, of $10,000.00, which had still some time to run before it matured, and it was then agreed that she should make a quitclaim deed of the homestead for the purpose of securing him for the repayment of the money that he was about to advance, which she did then execute in our office, and it is annexed to the original petition in this case as Exhibit "B." Her husband was then absent and the deed was sent to him to execute and return, which he did, and returned it to Ryan Bros. It was also arranged that Mrs. Shropshire should procure John to 229 deed the land to John Lyle that he had bought at the execution sale, and it was fully explained to Mr. Lyle under what arrangement John held the title. John Rheinhart made a deed, which bears date March 28th, 1878, attached to the original petition as Exhibit "C." These deeds were all to be left with us to be delivered to Mr. Lyle as soon as he should pay in to us for Mrs. Shropshire the amount of money necessary to remove the encumbrances, which we then estimated to be about $3,500. These negotiations lasted two or three days at least, and every matter connected with it was talked over fully. There was no talk or mention made during the negotiations that Mr. Lyle was buying the land. It was fully talked that these deeds were taken for the sole purpose of assuring to him the repayment of his money that he was about to advance.

Witness hands notary a letter-press copy of a letter to Dr. Cole, attached and marked Exhibit "S."

In explanation (of) the latter part of this letter I state that at a sale
of cattle the Downer and Coffin named had bought some cattle of
Mrs. Shropshire and given their notes for them and left
230 the cattle on the premises. The cattle had been levied on as
the property of Mrs. Shropshire, and Mr. Lyle had received
and held the note that these gentlemen had given for the cattle. Mr. Lyle left Newton and to go back to Kewanee, Illinois, and before he left the arrangement was made that he would loan her the money to pay off all these judgments and encumbrances, except the Davenport mortgage. After he had left Alexander Rheinhart then made a claim of $750, alleging that he had rented the farm. He was in possession, having lived with Mrs. Shropshire. This demand was resisted for a time. The negotiations were, or seemed to be, off. On the 22d of March Alex. Rheinhart directed us, Ryan Bros., to write to Mr. Lyle the letter which I hand the notary, marked Exhibit "T," and made a part hereof, which is a letter-book copy. On March 27th we wrote Mr. Lyle for Mrs. Shropshire; (Handed the notary, marked Exhibit "U," a letter-book copy, attached hereto and made a part hereof.)

On April 25th, 1878, we received from John Lyle, in two checks
or drafts—one for $3,500 and the other for $750—the sum of $4,250.
This sum we paid out under and in pursuance with the ar-
231 rangement to John Rheinhart, $1,218.84, and took from him
the receipt hereto attached and marked Exhibit "V" and
made a part hereof. We paid to Alexander Rheinhart and took his receipts for $750; the receipt whereof is hereto attached, marked Exhibit "W." We paid the Clark County bank judgment, $750. Before making these payments we took from Mr. Shropshire a writing, which we hereto attach, marked Exhibit "X," and made a part hereof. We also paid costs in the Downer & Coffin judgment, $12.55, April 26th; the balance on the Clark County bank judgment, $509.26, and costs paid in the case of Cole *versus* Zollinger, sheriff, $16.74; and we paid to Galusha A. Parsons, to apply on judgment in the Federal court, $992.16 on May 29th. This was the balance of money in our hands from the $4,250.

On April 22nd, 1879, we received from Mr. Lyle a letter, which I hand the notary and marked Exhibit "Y," and made a part of this my answer. On Feb. 25th, 1879, I received the letter marked Exhibit "Z" and made a part of my answer. It was a part of the ar-

rangement between Lyle and Mrs. Shropshire that Mrs. Shropshire
should remain in possession of the farm and should make
232 payments to him as they could, and that when he got his
money out they should have the farm.

I neglected to state that in 1880 we sent to John Lyle, June 24th, $148.25; in May of that year we paid him cash $18.00. We paid an order — $61.25, and in July we sent him a draft for $133.20. We received this money on accounts turned over by Shropshire to Lyle, and we charged $31.27 collection fees.

I was acquainted with the values of such lands and the land described in the petition in Jasper county in 1878 and 1879, and the sum of fourteen or fifteen thousand dollars ($14,000) or ($15,000) would have been very much less than the lands described in plaintiff's petition were worth. In my judgment the lands were worth then from $55 to $60 per acre. It was a tract of superior land with very fine improvements. There was a large two-story house, a large barn—a cattle barn—about 150 ft. long, I should think. The farm was well fenced, and the land was in fine —. I don't think John Rheinhart had any conversation or communication with John Lyle
in the matter of his making a deed to Lyle. He was told by
233 us what the arrangement was and made the deed when re-
quested when the deed by Mrs. Shropshire and her husband
was made covering the same land John had deeded. I knew nothing about that.

Cross-examination:

I am the David Ryan who originally brought this suit as attorney for Loretta Shropshire.

I am the David Ryan to whom the decree entered by default in this case was assigned.

I was not John Lyle's attorney in 1878. I have such an interest in this case as an attorney may honorably have in his client's cause, and the decree in this case was assigned to me in trust for six other gentlemen besides myself who were sureties on plaintiff's bond as administratrix of the estate of her first husband, on which we had to pay quite a sum of money. This was to be repaid out of this decree. I do not now claim to be the owner of this claim now pending. No
other assignment has been made me except what is of record.
234 I *purposed* most of the interrogatories on direct examination
at the request of *of* Judge Day, because I was more familiar
with the facts than he.

Int. 6. What part or proportion of the amount recovered are you to receive in this case?

Ans. I may be pardoned for saying that I regard this interrogatory as impertinent and unprofessional. I desire to add that I exonerate Judge Cole from it. I do not believe he would put to me such a question. I shall, however, answer it fully. There is no arrangement or agreement between plaintiff and myself as to what I am to receive. I expect to be paid for my services in an honorable and professional way, and I expect the money the sureties on her bond have had to pay will be refunded, and she has agreed to pay me whenever she can, but there is no arrangement for a conditional fee and never has been.

235 U. S. postal card. Kewanee, Mar. 7, 1878. Cancelled stamp.

Write the address on this side; the message on the other.

Ryan Brothers,
Newton, Iowa.

Jasper Co.

"Ex. O."

KEWANEE, *March* 7, 1878.

GENTLEMEN: See that everything is ready when we come. We only wait for our attorney to get home; expect him every train. Be assured we will not fail with the stamps; think we will wish to lift part, if not all, of the claim (mort.).

Yours,
(Signed) W. H. C.

236 "Ex. P."

MARCH 8, 1878.

Ryan Brothers, Newton, Iowa.

GENTLEMEN: I feel very much disappointed to-day, for I expected surely to start for your place this morning. Mr. Ladd has just come and says it will be impossible for him to leave before Monday or Tuesday, as he has cases at Toulon, Stark Co., docketed for Monday; that you may fully understand matters at this end, will state that Mr. Lyle is to back me to the full. He has now on hand $8,000.00, and proposes to collect in as fast as possible. I wish you to arrange with the parties holding the mortgage so we can take it up soon; will pay part now, if they will take it. Shropshire said he thought you could fix it so we could take up the whole mortgage during the spring. The reason why I wait for Mr. Ladd is this: He is Mr. Lyle's attorney, and this matter requires some money, and the old gent. says he must know the title is all right. You have abstract al*l*ready, so it will not delay us. My business
237 is such that it is trying to get off. Tell Mrs. Shropshire not to worry any more about us at this end nor about the work on the farm. There is plenty of time for grain. Write me a note on receipt of this or telegraph.

Respectfully yours,
(S'g'd) W. H. COLE.

P. S.—Mr. Shropshire has gone to Ky. & will likely be home (Glen Farm) in 2 weeks.

238 (Ex. Q.)

U. S. postal card.
Kewanee,
Mar. 16,
Ill.
Cancelled
stamp.

Write the address on this side; the message on the other.

Ryan Brothers,
Newton,
Jasper Co. Iowa.

MARCH 16, 1878, KEWANEE, ILL., SATURDAY.

We expect to start for Newton on Monday; will arrive on evening train.

Yours,
(S'g'd) W. H. C.

239 *Half-Rate Messages.*

The Western Union Telegraph Company require that all messages received for transmission shall be written on the blanks of the company under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following half-rate message:

GEO. H. MUMFORD, *Sec'y.* WILLIAM ORTON, *Pres't.*

Dated KEWANEE, ILL., 3, 1878.

Received at Newton, Io., 5.
To Ryan Bros:

Be over soon, my attorneys can leave *so*, taxes arranged.
(S'g'd) W. H. COLE.

10 p'd; half-rate.
Ex. "R."

240 Ex. "S."

NEWTON, IOWA, *Feb'y* 27, '78.

Dr. Cole.

DEAR SIR: I saw Mrs. Shropshire at Monroe yesterday and at her request make the following explanations of the status of the Shropshire farm: It consists of 540 acres, on which is a mortgage of $10,000 due May 1st, 1880, int. 10 per cent., payable May & Nov. 1 each year. In default of pay't of int. or of taxes mortgagee may take possession and foreclose. Taxes are $195.68 and failure to pay before M'ch 1 renders mortgage subject to foreclosure.

Against Mrs. S—— 3 judgments were rendered and stayed. On two a portion was paid by sale of personalty and sale of land outside of homestead, $1,001.25, Feb'y 19, '78, leaving bal. of about $1,000. The second judg't is against Mrs. S—— & D. Flynn for about $5,000, favor of Richardson Bros., of Davenport. This is a first lien on 600 acres of land owned by Flynn and will be satisfied out of Flynn,

we have no doubt. The 3rd judg't is for about $1,700, for which A. Rhinhart, as stay surety, is holden. At the sale Feb'y 19, '78, the land outside of homestead was bidden off as above * * * * by Jehu Rhinehart. We think if about $3,500 should be ad-
241 vanced to pay off matters on which A. Rhinehart is surety a deed would be made by Jehu Rhinehart, and if thought best you or Mr. Lyle might make the loan on the farm as proposed for amount of about $13,500, being sufficient to pay mortgage off and release Rhinhart.

At least, if this is not to be done, we would urge that Shropshire pay off balance of 1st judg't. On this the levy was made on the Downer & Coffin cattle, and, by no fault of theirs, these gentlemen are made to suffer. It is unjust, and Shropshire, having received the proceeds of their notes, should devote the same to payment of bal. of this judg't, whereby they will be released. Aside from considerations of simple honor and honesty we again urge this on the score of policy, for we believe at the termination of this trouble whoever is worsted will seek satisfaction by a prosecution of Mr. Shropshire. If you do not fully understand this matter we will be pleased to explain further if by so doing we can do any good. We have nearly forgotten to say the homestead is neither sold * * * mort.

RYAN BROS.

242 Ex. T.

NEWTON, IOWA, *M'ch* 22, 1-78.

Mr. John Lyle:

Alexander Rinehart is in and submits following proposition for your acceptance.

He requires judg't in circuit court U. S. of about $1,700.00 to be paid, bal. Clark Co. judg't to be paid, am't, $1,061.25 bid, with 10% int., and taxes, $195.65, court expenses, $200, and will, instead of ½ of place, take rent thereon of $3.00 per acre on 250 acres = to $750. He also requires indemnity against Richardson Bros. judg't by bond or in some satisfactory way.

He will pay in full settlement of all am'ts due Shropshire's $1,300 on adm'x's bond. In explanation of this he allows $75.00 for pasturage, and has a bill for same. Am't of cattle—$130 worth belonged to Dr. Johnson, to whom he has already given his note, leaving $1.300.00 due, which he is willing to apply as above. For this he will give his individual note, or you can take the cattle he bought of Shropshire's at same prices he bid for them and apply on adm'x bond. If you prefer he will take ½ of place, including farm-
243 ing land, provided he has the house and other buildings for one year from M'ch 1, '78. This is his last offer. If you will accept, please telegraph, as costs are accruing and must be stopped.

* * * * * * *

RYAN BROS.

244 Ex. U.

Newton, Iowa, *March* 27.

John Lyle:

Quitclaim deed is in our hands from J. Rhinehart for land outside of homestead, to be delivered on following conditions: The sum of $4,250, to be delivered to Ryan Bros., to be paid as follows: $750 to A. Rinehart; $1,001.25 and $195.65, with 10 % int. from Feb'y 19, '78, to be paid to Jehu Rinehart, and next in order balance of Clark County bank judg't; remainder to be applied on judg't in Federal court at Des Moines, in the case where L. Shropshire is def't and A. Rhinehart stay surety on stay bond, after payment of costs in judg't where Cole was pl'ff, Coffin ditto, and Downer ditto.

If you choose, you can send the money and we will forward deed or you can come and arrange in person.

Yours, RYAN BROS.

245 Ex. "V."—Ex. "G.

Newton, Iowa, *April* 25, '78.

Received of Ryan Bros. twelve hundred & eighteen $\frac{84}{100}$ dollars, being composed of $1,001.25 paid on purchase of land and $195.65 taxes advanced, with 10 % interest from Feb'y 19th, 1878 = $21.94.

(Signed) JEHU RHINEHART.

246 "Ex. W."

Newton, Iowa, *April 25th*, 1878.

In consideration of the payment to me of 750.00, I hereby agree to deliver immediate possession of the farm known as the Long farm, in section- 31 & 32, in township 79 north, of range 19 west, 5th P. M., Iowa, including the house thereon, hereby releasing all claim to said farm.

(Signed) ALEX. RINEHART.

247 Newton, Iowa, *April* 25, 1878.

Ryan Bros.

You are hereby authorized to pay the $4,250 forwarded by John Lyle in the following manner: $750.00 to A. Rinehart; $1,001.25 and $195.65, with ten per cent. interest on two last sums from Feb'y 19th, 1878, to be paid Jehu Rinehart, and next in order Clark County Nat. Bank *vs.* L. Shropshire *et al.*, and balance to be paid on judg't against me in the Federal court at Des Moines, Iowa, on which A. Rineheart is stay surety, after payment of costs in three cases against sheriff Jasper county, Iowa, wherein W. H. Cole, Coffin, and Downer were pl'ffs respectively.

(Signed) LORETTA SHROPSHIRE.

Ex. X.

248 KEWANEE, ILL., *Apr.* 22, '79.

Ryan Brothers.

GENTLEMEN: I am anxious to know about that mortgage. When can the money be paid? Answer soon.

Yours,
(Signed) JOHN LYLE,
(Signed) By W. H. COLE.

We have heard nothing from you since last writing you.
(S'g'd) C.

Exhibit Y.

(Endorsed:) W. H. Cole. Apr. 22, '79.

249 "Ex. Z."

KEWANEE, ILL., *Feb.* 25, 1879.

Ryan Brothers, Newton.

GENTLEMEN: The money is ready to take up the mortgage on Glen farm. Can we have it by paying interest to day of transfer to our hands? How about the suit as to books? Is it disposed of? If not, when, where, and before what court is it to be tried?

Yours,
(Signed) W. H. COLE.

(Over.)

Mr. Lyle wishes you to determine soon when the transfer can be made.
(Signed) C.

(Endorsed:) W. H. Cole. Feb'y 25, '79.

250 LORETTA SHROPSHIRE
vs.
JOHN LYLE.

Abstract of the Deposition of George Lyle, Taken July 13th, 1885.

George Lyle; age, 29 years; reside in Jasper county, Iowa; by occupation a farmer and stockman.

I am acquainted with the complainant and defendant, John Lyle. My depositian has been taken in this case on behalf of the defendant, John Lyle.

I know the situation and location of the 540-acre farm, in township seventy-nine, Jasper county, formerly owned by Mrs. Loretta Shropshire and now the subject of controversy in this suit.

I am now in possession of said land; took possession of it on or about March 2nd, 1883.

I contracted with John Lyle for the purchase of the said farm about December 1st, 1882, in Kewanee, Illinois. The contract was verbal. The contract price was $22,000. I paid it all cash. I traded 640 acres of land in Union county, Iowa, at $30 per acre and $3,800 in cash for it. The first payment of $3,800 was 251 made about December 1st, 1882, and the balance was paid and transfer made about the last of December, 1882. I gave no notes for the land. I gave a note of $1,600 for horses, cattle, &c., the stock on the place on December 1st, 1882. I have a deed for the said land and hand the notary a true copy thereof. (Deed attached, Exhibit "A," is a warranty deed for said premises, dated March 1st, 1883.)

252 EXHIBIT A.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and eighty-three, between John Lyle and Esther D. Lyle, his wife, of Kewanee, Illinois, parties of the first part, and George Lyle, of Jasper county, Iowa, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of twenty-two thousand dollars ($22,000.00) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, his heirs and assigns, all the following lots, pieces, and parcels of land situated in the county of Jasper and State of Iowa, to wit: The southeast quarter of section thirty-one (31), the southwest quarter of section thirty-two (32), the south half of the northwest quarter of section thirty-two (32), the southwest quarter of the northeast 253 quarter of section thirty-two (32), the west half of the southeast quarter of section thirty-two (32), all of said land lying and being in township seventy-nine (79) north, range nineteen (19) west, of the 5th principal meridian, in the county of Jasper and State of Iowa; also the following-described tract of land, beginning at a point forty-two (42) rods south of the northeast corner of lot number three (3), in section — (1), in township seventy-eight (78) north, range twenty-one (21) west, of the 5th principal meridian, in the county and State last aforesaid, and running thence south forty-eight rods, thence west sixty-six and sixty-six hundredths (66.66) rods, thence north forty-eight (48) rods, thence east to the place of beginning, together with all and singular the her*i*ditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the 254 her*i*ditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, and the said John Lyle and Esther D. Lyle, parties of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of the State of Iowa pertaining to the exemption of homesteads.

And the said John Lyle, party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance
in law and in fee simple and has good right, full power, and
255 lawful authority to grant, bargain, sell, and convey the same
in manner and form aforesaid, and that the same are clear and free from all former and other grants, bargain, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) JOHN LYLE. [SEAL.]
(Signed) ESTHER D. LYLE. [SEAL.]

STATE OF ILLINOIS, } ss:
Henry County, }

I, Charles K. Ladd, a notary public in and for said county, in the State aforesaid, do hereby certify that John Lyle and Esther D.
Lyle, his wife, who are each personally known to me to be
256 the same persons whose names are affixed — subscribed to the
annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth, including the release of the dower—of the right of homestead and dower. Esther D. Lyle, wife of John Lyle, having been by me examined separate and apart and out of hearing of the husband and by me fully informed of her rights under the homestead law of this State, acknowledged that she had freely and voluntarily executed the same and relinquishad her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homestead, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal the first day of March, 1883.

[SEAL.] CHAS K. LADD,
Notary Public.

257 LORETTA SHROPSHIRE
vs.
JOHN LYLE.

Abstract of Defendant's Testimony.

258 LORETTA SHROPSHIRE
vs.
JOHN LYLE.
Abstract of Defendant's Testimony.

Deposition of William Lyle, Taken April 30th, 1885.

My name is William Lyle; age, 26 years; residence, Kewanee, Illinois; occupation, farming.

I have known A. C. Shropshire since he first brought cattle to Kewanee to sell, in 1875. I think he kept his cattle in our pasture and we afterward bought some of them. The first time I saw complainant was in 1879, at her home in Iowa. I have heard both Mrs. Loretta Shropshire and her husband make statements about the payment by Mr. Lyle for the farm in controversy in this suit. I went over from Afton, Iowa, onto this farm in Jan., 1881. My grandfather, John Lyle, came the next day, or very soon after, and remained several days. Shropshire's folks were still there. We were all in the house together talking about the place, and A. C. Shropshire said that they had agreed upon a price for the place and was to let it go on what they owed grandfather at $40 per 259 acre, and he told them he would rather have the money than to have the place, and he says, "If you can get any more than $40 an acre for it within a year — can have all over that." Then A. C. Shropshire says, "Uncle Johnny, when will I have to move from here?" and he says, "That is between you and Will; I don't suppose he is in a hurry and you can fix it with him." Shropshire says, "I want to move to Newton, but I have no stabling there and I would like to stay till about June and get my cattle ready to sell." I says, "There is plenty of house-room and plenty of stable-room and you can just as well stay as not." He said otherwise he was ready to move out right off.

Loretta Shropshire was present during all this talk and heard it all.

She has told me time and again that she would rather my grandfather would have the place than anybody else; said that my grandfather had done more for her than her own father ever did.

I cannot give the date when these things occurred, but I know that A. C. Shropshire came here to Kewanee and wanted my 260 grandfather, Mr. Lyle, to — off some mortgages and take the place. He said it was worth twice as much as the indebtedness, and that if it was to be sold they would rather he would have it than anybody else, and that unless he did take it they would have to lose it.

I have also been shown an account said to be claimed against Mr. Lyle by A. C. Shropshire and now on file in this suit. I know something of some of the items in that bill. (The black mare

bought in April, 1878, was bought by me for $200.00 instead of $300.00, and this was to be credited on Mr. Lyle's account against Shropshire.) The black stallion next charged in the bill was sucking the mare—same mare I bought at the time. Gus. Shropshire claimed the colt, and was negotiating with Mr. Lyle for a loan of $5,000, and offered as an inducement that he would make him a present of the colt. Mr. Lyle let him have $1,000.00, I think, at the time and we came home. Afterwards the abstract of the land that Gus. Shropshire was to give as security for the loan was not satis-
factory to my grandfather, Mr. Lyle, and he refused to ad-
261 vance the rest of the money, and there the matter stands yet.
Gus. Shropshire got the $1,000 and grandfather got the black colt. The stock that there is $110 charged for shipping from Kentucky in May, 1879, belonged to Shropshire and not to Mr. Lyle. In regard to A. C. Shropshire buying 26 head of cattle in 1879 and keeping them, I was there in the spring of 1879 and never saw or heard of these cattle at all, for which he charges $25.00 for buying and $10.00 for feeding. As to the item for my board in Jan., 1881, that was just after I went there to stay, and during the whole spring I worked with my team, hauling feed and helping take care of his stock, and supposed that my work was worth *than* my board at least, as I was of age and working for myself. George Lyle was not there at all at that time. As to the eight tons of hay, there was no hay on the place when I went there, and we did not have it. As to the stock hogs, there were forty-two or forty-three hogs there at the
time, and Shropshire wanted $8.00 a head for them. Grand-
262 father finally agreed to give him $7.00 or $7.50. I do not
remember which. This included the brood sows and all, and Shropshire afterwards butchered two of these same hogs for himself. There was only the one lot, and the forty-three included all. In regard to breeding mares in June, 1881, we did not breed any to his horses. We had only three mares bred on the place, and they were bred to Joe Long's horse and Long got pay for it. Grandfather got two stoves and put — into the house on the farm and allowed Shropshire's folks to use them—one a base-burning heating stove and one a large cook stove. They kept them red hot and cracked and burned them all out, so that they were practically worthless when they left. I do not know what the stoves cost.

Cross-examination:

I am a grandson of the defendant. My uncle, Thomas Lyle, is a brother of John Lyle and has a large family. I have also a sister, Mrs. Etta Fischer, and there is a large family of more distant relatives.

My grandfather took me when I was about eleven years
263 old, and I have lived with him ever since. He has always
done for me the same as if I was his own child, and perhaps better than most men do for their children.

I am under the same obligation to the defendant that a son would be to his father. I have always worked for him and he has helped me to what I have.

I am not under any pecuniary obligation to him at the present time. I am not the nearest relative to the defendant now living; his nearest relative is his brother, Thomas Lyle, and I have a brother and a sister.

Deposition of Charles K. Ladd, Taken May 2nd, 1885.

My name is Charles K. Ladd; age, 46 years; residence, Kewanee, Illinois, and occupation, attorney-at-law. I am acquainted with the defendant and have known him for twenty years.

I am acquainted with the complainant and her husband, A. C. Shropshire. I first met her in Jan., 1880, at her home on the land in question. I met A. C. Shropshire when he first came to Kewanee, in 1874 or 1875, and I have known him ever since.
264 I know of considerable business between John Lyle and the complainant on account of having been Lyle's attorney and legal adviser most of the time and having been consulted by him in most of the transactions, many of which were with and in the presence of A. C. Shropshire, who professed to act for the complainant, and with the complainant herself and her husband and Mr. Lyle.

I am acquainted with many of the transactions growing out of the subject-matter of this suit. Mr. Lyle and A. C. Shropshire had been frequently and constantly dealing with each other in relation to blooded stock and farm lands mainly, Mr. Lyle generally furnishing the capital and assisting Shropshire, and at the time that complainant married A. C. Shropshire he was indebted to Mr. Lyle for loans and advancements to quite a large amount. After his marriage Shropshire was not here as much as before, but occasionally came, and the same relations were continued between himself and Mr. Lyle as had existed previously. In the early part of 1878 he came here and spent considerable time and repeat-
265 edly talked with me about his business matters, his object as then declared to me being to induce Mr. Lyle to advance some money to save the farm belonging to his wife, and stock it, representing to me that on account of the indebtedness of his wife they were about to lose the farm, but that it could then be purchased at such a price as to leave a good margin, and if they could have it owned by their friends so that they could occupy it and use it for the purpose of raising and handling blooded stock a good deal of money could be made for all parties interested. He was at that time on very friendly terms with Dr. Wm. Cole, of Kewanee, who also talked with me about the enterprise and desired me to advise Lyle to furnish the money to purchase the farm and stock it and allow Cole to manage the business in his name and pay Lyle interest on the money. To use their language, "As Uncle Johnny was getting old and wouldn't care to be bothered with too much business so far away from home, and that he would manage it and pay interest on the money invested and thereby make money for himself and for Shropshire and for Lyle." He said it would
266 take twenty thousand dollars to buy the farm and such stock as

would be necessary to put onto it. Cole and Shropshire at several times urged me to recommend that course to Lyle and wished me to go to Jasper county and examine the title to the land and see that the papers were properly made, Mr. Lyle having decided to purchase the farm if everything was satisfactory. I agreed to go to Iowa to assist in making the papers and examine the title as soon as my business would permit. I was unable to do so as soon as desired by Mr. Shropshire and Dr. Cole, when they employed James K. Blish, an attorney of this place, to go to Newton, Iowa, for that purpose. All of the business in that connection that I did for Mr. Lyle was with A. C. Shropshire and Dr. Cole, excepting a settlement that was made at complainant's home on the land in question on on the 27th day of January, 1880.

I went there at that time at the request of Mr. Lyle to take steps to get possession of the farm and rent it to other parties unless complainant and her husband paid up their rent and complied 267 with the terms of the lease which they held from Mr. Lyle, dated March 1st, 1879. At that time the complainant and her husband and Mr. Lyle talked over their dealings and made a settlement in which Mr. Lyle agreed to cancel all indebtedness which he held against them upon their compliance with and carrying out the terms of an agreement then signed by them on the back of their lease, a copy of which agreement appears in connection with Mr. Lyle's deposition in this case. I figured up the account as stated between them, which was composed of these items:

Paid on the German savings bank mortgage	$10,000 00
Note signed by A. C. Shropshire and Gus. Shropshire	1,000 00
Cash that had been advanced on the farm and for other purposes	4,250 00
For interest that Lyle had paid on the $10,000 mortgage prior to his purchase of the farm	500 00
Paid by Mr. Lyle for cattle furnished complainant and husband	1,420 00
One horse	600 00
One horse	200 00
One lot of cattle	400 00
One black stallion	700 00
An item of cash loaned	113 00
Another cash item	12 50
Rent of the farm due	3,400 00

268 Most of these items drew interest, which was figured up, but the exact amount I cannot state, as the paper on which the calculations were made was not preserved, and I think other items were included which I cannot now give. The item total of principal and interest then admitted to be due Mr. Lyle amounted to over $20,000, exclusive of the rent due, and I think over $25,000, but Mr. Lyle then stated that if they would pay the rent for the farm according to the agreement as written on the back of the lease they could continue in possession, and whenever they would find a purchaser for the farm he would convey it to such purchaser for the money he

had invested in it and would allow them $1,000 for making the sale, as he had no use for the land and wished to get out of the whole business. I drew the agreement that is written on the back of the lease, a copy of which appears in Mr. Lyle's testimony as Exhibit "7," and after reading it over to all of the parties, who were together in complainant's house, it was signed by complainant and her husband and Mr. Lyle, the defendant, in my presence. I had a note, referred to under date of March, 1880, C. J. Poole and
269 Fuller, in complainant's and A. C. Shropshire's bill or account against John Lyle for collection and collected it. The note was dated April 1st, 1880, due two years after date, and was for $1,700, with ten per cent. interest, and signed by Isaac Fuller and C. J. Poole, and has been paid by part cash and the rest secured by mortgage, and the old note was delivered to Isaac Fuller, of Le Mars, Missouri.

Cross-examination of CHAS. K. LADD:

I am not one of the attorneys of the defendant in this case. I was until the complainant's testimony was taken and examined by me, when it became necessary, in Mr. Lyle's judgment, that I should testify to the facts within my knowledge, at which time I notified Mr. Lyle that I would cease to act further as an attorney and that he would have to look to Messrs. Cole, McVey and Clarke for the conduct of his case thereafter. I also informed Cole, McVey & Clarke of my determination to act no further in the case as an attorney, and Mr. Lyle went to Des Moines to consult with them. I have been for years the attorney and confidential adviser of
270 defendant. I am the same C. K. Ladd who made and filed an affidavit in this cause to set aside the default and decree entered herein at the October term of this court in 1884.

I have not derived most of my information as to the facts about which I have testified from the defendant.

I derived my information in the manner stated in my answer to the fifth interrogatory.

I do not know of any material matter involved in this suit that the defendant has not consulted me about.

I cannot give the dates or when these matters first commenced.

I did not participate in any negotiations between plaintiff and defendant at Kewanee, Illinois, in the month of February or March, 1878.

I participated in negotiations of Mr. Lyle on one part and A. C. Shropshire and Dr. Cole on the other part in regard to the subject-matter involved in this suit at Kewanee a short time prior to making the deeds at Newton, Iowa, in March, 1878.

I was not at Newton, Iowa, in March, 1878, nor present with complainant and defendant or any other parties concerning any negotiations or business transactions connected with the subject-
271 matter of this suit in the year 1878.

I was never in Newton, Iowa, excepting to pass through there on the railroad without stopping, until January, 1880.

I was at Des Moines, Iowa, on or about the 10th day of April, 1885, and examined the depositions of complainant then on file.

I did not at that time converse with Messrs. Cole, McVey & Clarke, attorneys for the defendant, as to what my testimony would be. I conversed with them about the testimony of the other witnesses and told them of the facts within my knowledge, but did not tell them what my testimony would be.

272 *Deposition of John Lyle, Taken May 5th*, 1885.

My name is John Lyle; age, 79; have lived at Kewanee, Illinois, and in this vicinity for forty-nine years; have been farming, trading and selling horses, buying cattle, loaning money, and a little of everything in that line.

Am acquainted with A. C. Shropshire. My first acquaintance was when he came up here from Kentucky with some blooded cattle to sell; I think in 1874 or 1875. The next time when he shipped cattle he brought them directly to my place. That was the same spring that he bought a place here. He kept them at my place two or three weeks, I think, and then took them to Charles Kent's for about two weeks, and then he brought them back again. When he bought his place here I paid a thousand dollars for him and signed his notes for the balance. He told me afterwards that Culley, a liveryman here, sent him to me in the first place, and told him that if I liked him I would do anything for him, and if I didn't I wouldn't have anything to do with him.

273 The first I ever saw of Loretta Shropshire, the complainant, was at Ottumwa, at a cattle sale, I think three or four weeks before she was married to Shropshire. The next time was when I went to the wedding; saw her then at her house.

In February or the fore part of March, 1878, A. C. Shropshire and Wm. H. Cole told me at Kewanee that Mrs. Shropshire's farm had been sold under a stay and could not be redeemed, but the man who bought it would sell it cheap, as it was mortgaged for $10,000; that the farm was a good stock farm, and that money could be made raising stock on it.

I knew the farm; it was a good stock farm, but the buildings needed a great deal of repaires and fixing. They said if I would furnish the money to buy the farm and some stock to go with some that Shropshire and his wife had all of us could make money out of it.

Cole wanted the business done in his name; said I was too old to be bothered with it, and he could manage it, and Alex. could 274 run the farm and take care of the stock and they would pay me interest on my money and after awhile buy me out if they had as good luck as they expected. Cole was to manage it in his name because Shropshire and his wife were badly in debt. After a great deal of talk about it I agreed to go to Iowa and have the title to the land examined, and if it was all right I would buy the farm and put some stock on it, but proposed to have in my own name unless I could be secured so I would be absolutely safe. We waited

awhile before we went, as I wanted my attorney, Ladd, to go with
me, but he was busy and Mr. Blish went with us to Newton. The
land sold on the stay sale did not include the homestead, but as
Alex. C. Shropshire owed me, and he and his wife had to have
money to pay a judgment against Mrs. Shropshire, they agreed to
deed me their interest in the farm if I bought out Rheinhart, the
man who bought the land on the stay sale. If I bought it I would
have to pay a $10,000 mortgage they had given to the German savings
bank, at Davenport. I had paid $500 of interest on that
275 mortgage in 1877, and Alex. and his brother Gus. owed me
$1,000 and interest from December 1st, 1877, on a note. I
attach a copy of it to my deposition, marked Exhibit "1." He owed
me much more besides this note. I think A. C. Shropshire was in
Kentucky when we went to Newton in March, 1878. While there
I bought the part of the farm that had been sold on the stay execution
of John Rheinhart, and he made me a deed, and I attach a
copy of it to this deposition, marked Exhibit "2." I had before that
agreed with Mrs. Shropshire to buy the whole farm and taken her
deed to the homestead, a copy of which I attach, marked Exhibit
"3." She wanted what would amount to $40.00 an acre for the whole
farm, and agreed that all her husband owed me should be reckoned
in. She said all but the homestead had gone out of her reach, but
it all ought to go together because the buildings were on the homestead.
I told them that I did not want the farm. The only reason
I bought it was to help them, and if they could save anything by
living on the farm I was willing to help them. Nothing was
said to me by Mrs. Shropshire or anybody else about
276 Rhienhart holding it in trust for her. I understood from
what she told me that she and Rhienhart were not good
friends, and that she did not expect to save anything out of the
land he had bought. I know that Mrs. Shropshire and John Rhinehart
were not good friends. Rhinehart had to pay the $10,000
mortgage and $1,000 besides was the reason they gave me for his
selling it, because he was not able to pay that much. Mrs. Shropshire
had to have some money at once to pay a judgment against
her and some other things, and that with what I paid Rheinhart
made $4,250 that I paid them in cash when I took the deeds I
have named. I attach a copy of the note and mortgage which I
agreed to pay, together with the interest, marked Exhibit "4."
The interest was due May 1st, 1878, and I paid it May 9th, 1878,
and attach a copy of the receipt for it, marked Exhibit "5." At
the time the deeds I have named were made Mrs. Shropshire and
her husband owed me, besides the $1,000 note I have mentioned,
$1,400 for cattle and $600 for a half-blood Clyde stallion and
277 $50 for two hogs which I sold them and were then on the
farm. I did not figure up the interest on the amount that
they owed me, because I was not very particular about the small
things, as we had been friends and they were badly in debt. At
the time I took these two deeds they owed me $17,300 on principal,
besides $500 that I let Alex. have when he *was* married the
complainant, and lots of smaller things that I kept no account of.

The deed made to me May 1st, 1878, was made because I had been told that A. C. Shropshire would have a dower interest in the land I bought of Rheinhart, and I wanted a clear title. I attach a copy of that deed, marked Exhibit "6." I have no learning and cannot write much more than my own name, and Cole and I had been friends for a long time and I let him do considerable of the writing. He wanted to run the whole business in his name, so Shropshires' creditors could not bother them, but the complainant and her husband were to have an interest in the running of the farm and handling of the stock. I never knew exactly what their arrangement was. He and both of 278 the Shropshires wanted me to go to Kentucky and buy some more blooded cattle for the farm, and in April, 1878, Cole, Alex., and I went to Kentucky and were gone about two weeks, but did not buy any cattle. We looked over a good many, but did not buy any. They were to pay my expenses and time there and back. We were there a week before any steps were taken to buy any cattle, when I proposed, if we were going to buy, we had better do so. Cole said that they were not ready to buy, but that I might leave the money with them and go home and they would buy and ship to Iowa. I told them that if anything was bought I was going to do it and it would be in my name. Cole came home, and in a few days I came home and left Alex. there. In about two weeks after I got home Alex. wrote for me to come back. He had before then sent some of his fine stock down there, and it was mortgaged. I went back to Kentucky, and Alex. told me all the stock he had shipped back to Kentucky was mortgaged to Swope. The stock he had shipped back was claimed by one Shropshire, a brother of 279 A. C. Shropshire, and Gus. had mortgaged it to Swope. Alex. wanted me to redeem it and let Gus. have half of it and he would take the other half to the farm in Iowa. While I was there I bought the horse Black Jewel for myself and redeemed Black Eagle from Swope's mortgage for Mr. and Mrs. Shropshire and he was shipped to the farm in Iowa and kept there. I paid $700.00 for Black Eagle, and they have never paid me for him. They never paid me my expenses or time to Kentucky for either trip. My time and expenses each time was worth $100 at least. I made no arrangement with them about the rent of the farm until March 1st, 1879, when I gave them a lease of the farm for $1,700 a year. They had the use of it until then rent free. I attach a copy of the lease to my deposition, marked Exhibit "7." I supposed I had possession of the place from the time the deeds were made to me. I sent the $4,250 out after I was there and made the trade, in March, 1878. I sent the money to the bank in Newton to be paid out as we agreed, and directed Smith and Wilson, my attorneys there, to see to its payment as we agreed. Dr. Cole did the writing and received the letter from them dated April 29th, 1878, saying they had paid it out as directed. Rheinhart was living on the farm when I bought it. Cole had some sort of a deal with 280 the Shropshires and had the stock and other things on the farm in his name, but I made him turn over his pre-

tended claims to me, as my money bought all the stuff. On November 1st, 1878, I paid $500 interest on the $10,000 mortgage, and attach a copy of the receipt, marked Exhibit "8;" and the second day of May, 1879, I paid $500 more interest and all the principal of that mortgage and had the mortgage assigned to me, and attach a copy of the assignment to my deposition, marked Exhibit "9." About the 15th day of February, 1879, I sold to Mrs. Loretta Shropshire a sorrel stallion, "Star of the West" stock, for $200, and four or five head of short-horn cattle—I do not remember which—for $800. I had bought all of them of A. C. Shropshire before then and paid him the cash for them when I bought them. They were in Kewanee, Ill., when I sold them, and she was to pay for shipping them to Iowa. I shipped them and went out with them and paid the freight on the car, which was $40, and my own fare—$5.00—and they have not paid me that yet, nor for the cattle. When we
were in Kentucky the second time I paid them $100 to pay
281 for taking the horse I bought for them to Iowa, and they
have not paid me that yet. Mrs. Loretta Shropshire went with me to Kentucky the second time I went. She did not have money enough to pay her fare all of the way, and I let her have $13.00, which she has not paid. She was along when I bought Black Eagle for her, and wanted me to buy several other stallions. She wanted Black Jewel then, but I kept him till the fall of 1880, I think it was, when I sold him to her for $600, and at the same time I sold her two barrels of vinegar, but did not agree as to the price. It was pure cider vinegar. She said it was worth forty cents a gallon then in Iowa, but it was worth only twenty-five cents here, and that is all I charged her. There was at least one hundred gallons of it, and they have never paid that nor for the horse. In the fall or winter before complainant moved off the place I bought one thousand bushels of corn and had it put onto the farm, and she fed it all out to her own stock, except about two hundred bushels. I paid twenty-five cents a bushel for the corn, and it was worth it, and they have not paid me for that. I also put a new cook stove into the
house and she nearly used that up by overheating and abuse.
282 It was worth $50.00, and I had another stove there that they
nearly spoiled; the damage done by her to both stoves was not less than $50.00, but they have paid me nothing. They also wore out a corn-cracker that belonged to me on the place, but I made no charge for that. I received a good many letters from the Shropshires and their attorneys, the Ryan Bros. and Robert Ryan, concerning our matters, but cannot now find all of them, as I never supposed I would want them; all I have I attach copies of, marked Exhibits "10," "11," "12," "13," "14." "15," "16," "17," "18," "19," "20," "21," "22," "23," and "24." In January, 1880, after allowing the complainant $40.00 an acre for the farm, she owed me, upon a careful settlement, if I had charged her for everything and interest on everything, more than $5,000, without reckoning in any rent; and on the 26th of Jan., 1880, I went to see them and took C. K. Ladd, my attorney, along to see if I could not get the money that was due me or get them to leave the place in time for me to

rent it by the first of March or in time for the season, and when there at the house Loretta Shropshire, A. C. Shropshire, Ladd, and myself talked it over and made a settlement; and there was
283 then due to me $4,500, besides the rent of $1,700 that would be due March 1st, 1880. I did not figure it very closely, and then offered them $1,000 off if they would find any one who would purchase the farm of me for the money I had put in it. I had made them the offer before, and always said to them that they could have $1,000 if they would find anybody to take it off my hands. They, Alex. and his wife, both said at that time that they thought they could find some one to do it before the year was out and could raise the money to pay me all they owed me without throwing off the $1,000, as they had a good deal of money due them for stallions' service and could raise considerable from a sale of stock. They signed the agreement on the back of the lease at that time and I signed it. I considered after that time that the amount they owed me was only $4,500 besides the rent, and would have been glad to have sold out, as I offered, for $1,000 less than I had paid. I paid the taxes on the farm for 1879, 1880, and 1881, in all $397.07, and attach the receipts to my deposition, marked Exhibits "25," "26," and "27." I never heard that they claimed that I owed them or that Rheinhart
284 held the farm in trust for Mrs. Shropshire until this suit was commenced. I bought it the same as I would buy anything, and supposed it was mine. We never had any talk about the deeds being mortgages, and I never supposed they were anything but deeds that gave me the title to the land. I always said to them that they might have all they could sell the farm for above my money I had in it and I would throw off $1,000, and have been ready to do it all of the time till they gave it up, for I didn't want the place. I had more land than I wanted without it. I had no talk with them in 1881 about buying it, and never at any time agreed to give or allow them more than $40.00 an acre for it, and was willing to do that, and that was all that it was worth. I was offered land adjoining it that was as good for less money. Whenever any one would go on the place to buy it, Shropshire would go up on the price, thinking they could make a big thing out of it. I think they could have sold it if they hadn't wanted to make too much out of it. After I concluded there was no use of fooling any more with them to sell the place, I told them I would keep it myself rather
285 than sell it at $40.00 an acre, for I had made a good deal of improvement on it. I had Henry Pinney write them a letter telling them so. I could not write or read the letter and don't remember whether he read it to me or not before sending it. He often wrote letters for me and sometimes would read them over to me after writing, but not always. I expect that letter is one that they have in their deposition.

Int. 5. The following items appear in the deposition of Loretta Shropshire and A. C. Shropshire, now on file in this case, and are therein stated as charges against you. Please state the facts in reference thereto and each item.

April,	1880.	To amount paid Lyle by Ryan Bros.	$390	70
"	1878.	One fine black mare at agreed price	300	00
		To one black stallion, one year old	500	00
March 3,	1879.	Note S. Boyd, principal and interest	82	50
"	"	One sale of hogs	300	00
May,	1879.	Amount repaid Lyle for taxes	113	85
"	"	Shipping stock from Kentucky, ex.	110	00
Sep. 14th,	1879.	Cash, J. G. Long	30	00
" 6,	1879.	September	400	00
March,	1879.	Expenses Ft. Dodge for Lyle	10	50
"	"	Buying 26 head cattle for defendant	25	00
March,	1879.	Boarding two men, 16 days	16	00
"	"	To use horse and buggy, 14 days	28	00

286

Jan. 27,	1880.	To one horse and buggy, 2 days	5	00
March,	1879.	To one saddle horse, 10 days	10	00
"	"	Keeping 26 head cattle, 10 days	10	00
March,	1880.	To note on A. J. Poole and Fuller	1,950	00
"	"	Feeding cattle on contract	25	00
Jan.,	1881.	Boarding Wm. Lyle for def't, 12 weeks	48	00
"	"	To boarding Geo. Lyle for def., 18 weeks	72	00
"	"	" " defendant, 2 weeks	8	00
Jan.,	1881.	To eight tons of hay	64	00
June,	1881.	62 stock hogs	496	00
"	"	Eight brood sows	120	00
"	"	Breeding four mares to horses	100	00

Ans. As to the first item, money received from Ryan Bros., the amount received was $148.25 instead of $390.70, and of the amount received $23.85 was for the use of my horse, and the balance on A. C. Shropshire's credit, as shown by Ryan Bros.' letter of June 24th, 1880, attached as Exhibit "16" to my answer to the last interrogatory.

As to the black mare and black stallions, I never bought a horse of any kind of him in the world, but the black mare was bought by Wm. Lyle and was settled for after Shropshire's sale, when I took the sale notes.

It was figured up and settled for in Kewanee, at Dr. Cole's office.

The Boyd note I had, and it may have amounted to that
287 much when it was paid, but I had paid the money out before.

It was for the taxes the year before I bought the place. I think that hog item is correct. I had forty-three hogs of him, but he killed two of them afterwards, which should come out. All the taxes he ever paid me was *the* for the year before I got the place. He never shipped any stock for me from Kentucky or paid for any. I think Long paid me that $30.00. Shropshire was away, and I got some of Long. The item of $400.00 cash in September, 1879, I never got. He didn't pay me any cash item. The trip to Ft. Dodge that he charges me for was his own business. He went to see about that note that he let me have. He never bought any cattle from me nor boarded any man for me, and I never had his horse and buggy for fourteen days or at any time. He had mine, but I did not his, neither did I have a saddle horse of him. I was never on a horse out there but my own, neither did Shropshire or his wife ever keep any cattle for me at any time. I had the Poole and Fuller note, but it was for $1,700.00 instead of $1,950.00. Shropshire never fed any cattle for me on contract or any way. If he boarded 288 Wm. Lyle it was on his own account and not mine. He was of age and not in my employ. I know nothing about Geo. Lyle being out there and do not think he was, but, if so, he was not boarded for me. He never boarded anybody for me. I was there in Jan., 1881, but never for more than three days at a time. As to the eight tons of hay, I never bought a spear of hay from him at any time. As to the sixty-two stock hogs and eight brood sows, all of the hogs I ever bought of them or either of them was the forty-three head that I spoke of before and which are charged for in the fore part of the bill. This item is all wrong. I didn't have them. As to the last item, I only had three mares, and they were bred to Long's horses. The note, the hogs, and the thirty dollars were received on A. C. Shropshire's account individually and had nothing whatever to do with the farm.

Complainant never did in her life demand payment of any additional money upon the purchase price of said farm prior to the commencement of this suit. She never did prior to the commencement of this suit make any claim against me for money alleged to be due her from me. I do not know what the farm was worth any 289 more than what Ryan Bros. said. They said it was not worth more than thirty dollars, but I think they really wanted to buy it. The sills of the big barn were rotted out, and I think the sills of the other were the same way. The house was badly out of repair. The farm was figured at $40.00 an acre to me. The fences was poor and there came a big wind and blowed them all down, and it cost me $800.00 to fix them up. That was in 1881. When I leased it to Long I was to put the fences in repair, and they all blew down before I got them repaired. I fixed the house also. The repairs and painting cost $200.00.

Cross-examination:

Int. 1. Did you not give your deposition in a cause in the circuit court of Jasper Co., Iowa, wherein Alex. Rhinehart was plaintiff and A. R. Johnston *et al.* defendants, on the 10th day of April, 1882, in which the following interrogatory, number seven, was propounded to you, to wit, "If you or either of you have in your possession any letter or letters written by A. Rhinehart or L. Shropshire or the agent of either of them or by any other person containing a proposition from either of them made to John Lyle for a loan from said 290 John Lyle to L. Shropshire with a view to settlement between Mrs. L. Shropshire, A. Rhinehart, and other parties in 1877, please attach said letters to your deposition"? Did you not answer that interrogatory as follows: "I did receive two or more letters from Ryan Bros. in 1878, who, — appeared from the letters, were acting as the agents of the plaintiff, containing propositions for a loan of money with a view of settlement between Loretta Shropshire, the plaintiff, and other parties"? Did you or did you *or* not?

Ans. I do not recollect of giving a deposition in that case at all. I know I had a letter from Ryan asking about two letters he wrote me. I told him I had destroyed them and could not tell what they was. I recollect of giving a deposition in one case out there, but I think it was about a horse Dr. Cole had.

Int. 2. Was not the following interrogatory proposed to you in said deposition, to wit: Int. 9. "If you cannot produce said letters please attach copies of the same, if in your possession, or state the contents as nearly as practicable," and did you not answer as follows: I cannot attach copies of them, as I did not preserve
291 them. The substance of the first proposition, as I remember
it, was that I should pay a judgment in the U. S. court for $1,700.00, for which the plaintiff was surety, and the balance bid on the land by John Rhinehart above the judgment for which it was sold, amounting to over $1,000, and some taxes and costs amounting to three or four hundred dollars more; that plaintiff would pay Mrs. Shropshire some $1,300 he owed her for cattle or turn over the cattle at the price he bid for them. I think he also wanted the use of one-half the place—some two hundred and fifty acres for one year—or $750.00 in money, to be paid to plaintiff; that proposition I did not accept. The second proposition was that I should pay some $4,250.00 to Ryan Bros., to be applied on payment of $750.00 to the plaintiff, some $1,000 to John Rhinehart, and the judgment in the U. S. court above referred to, and some other judgments that I cannot remember. There were some other matters mentioned in the letter that I cannot recall. When this was paid John Rheinhart was to quitclaim his interest in the land
he had bid off, and I think the last letter said that Ryan
292 Bros. already had the deed in their hands. This proposition
I accepted and the money was sent to Smith and Wilson, of Newton, Iowa, to arrange the matter?"

Ans. That answer covers in a general way that transaction, and, if I testified in that case, I testified that way, but I don't recollect now of testifying.

I think I saw John Rheinhart when I was at Newton, March, 1878, and he was to make a quitclaim deed when the money was paid over. Smith and Wilson's letter says that they have the quitclaim deed.

All the settlement that I made was in Jan., 1880, and it is included in the transaction set forth in my answer to the 4th direct Int. I have given a full account of everything in my 4th answer.

nor boarded any man for me, and I never had his horse and buggy for fourteen days or at any time. He had mine, but I did not his, neither did I have a saddle horse of him. I was never on a horse out there but my own, neither did Shropshire or his wife ever keep any cattle for me at any time. I had the Poole and Fuller note, but it was for $1,700.00 instead of $1,950.00. Shropshire never fed any cattle for me on contract or any way. If he boarded 288 Wm. Lyle it was on his own account and not mine. He was of age and not in my employ. I know nothing about Geo. Lyle being out there and do not think he was, but, if so, he was not boarded for me. He never boarded anybody for me. I was there in Jan., 1881, but never for more than three days at a time. As to the eight tons of hay, I never bought a spear of hay from him at any time. As to the sixty-two stock hogs and eight brood sows, all of the hogs I ever bought of them or either of them was the forty-three head that I spoke of before and which are charged for in the fore part of the bill. This item is all wrong. I didn't have them. As to the last item, I only had three mares, and they were bred to Long's horses. The note, the hogs, and the thirty dollars were received on A. C. Shropshire's account individually and had nothing whatever to do with the farm.

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Ans. I do not recollect of giving a deposition in that case at all. I know I had a letter from Ryan asking about two letters he wrote me. I told him I had destroyed them and could not tell what they was. I recollect of giving a deposition in one case out there, but I think it was about a horse Dr. Cole had.

Int. 2. Was not the following interrogatory proposed to you in said deposition, to wit: Int. 9. "If you cannot produce said letters please attach copies of the same, if in your possession, or state the contents as nearly as practicable," and did you not answer as follows: I cannot attach copies of them, as I did not preserve
291 them. The substance of the first proposition, as I remember it, was that I should pay a judgment in the U. S. court for $1,700.00, for which the plaintiff was surety, and the balance bid on the land by John Rhinehart above the judgment for which it was sold, amounting to over $1,000, and some taxes and costs amounting to three or four hundred dollars more; that plaintiff would pay Mrs. Shropshire some $1,300 he owed her for cattle or turn over the cattle at the price he bid for them. I think he also wanted the use of one-half the place—some two hundred and fifty acres for one year—or $750.00 in money, to be paid to plaintiff; that proposition I did not accept. The second proposition was that I should pay some $4,250.00 to Ryan Bros., to be applied on payment of $750.00 to the plaintiff, some $1,000 to John Rhinehart, and the judgment in the U. S. court above referred to, and some other judgments that I cannot remember. There were some other matters mentioned in the letter that I cannot recall. When this was paid John Rheinhart was to quitclaim his interest in the land he had bid off, and I think the last letter said that Ryan
292 Bros. already had the deed in their hands. This proposition I accepted and the money was sent to Smith and Wilson, of Newton, Iowa, to arrange the matter?"

Ans. That answer covers in a general way that transaction, and, if I testified in that case, I testified that way, but I don't recollect now of testifying.

I think I saw John Rheinhart when I was at Newton, March, 1878, and he was to make a quitclaim deed when the money was paid over. Smith and Wilson's letter says that they have the quitclaim deed.

All the settlement that I made was in Jan., 1880, and it is included in the transaction set forth in my answer to the 4th direct Int. I have given a full account of everything in my 4th answer.

293 EXHIBIT No. 1. (S'g'd) Jas. K. Blish, Com'r.

("Copy.")

$1,000.00. KEWANEE, ILL., *Dec. 1st*, 1877.

One day after date I promise to pay to the order of John Lyle one thousand dollars, at Kewanee, Illinois, value received, with ten per cent. interest, interest to be paid annually.

GUS. SHROPSHIRE.
A. C. SHROPSHIRE.

294 Ex. No. 2. (S'g'd) James K. Blish, Com'r.

(Copy.)

Quitclaim Deed.

Know all men by these presents that we, Jehu Rhinehart and Harriet Rhinehart, his wife, of Jasper county, State of Iowa, in consideration of the sum of forty-two hundred & fifty dollars in hand paid, do hereby sell, convey, and quitclaim unto John Lyle, of Henry county and State of Illinois, all our interest in and to the following-described premises, to wit, the southeast quarter of section thirty-one (31), except 8.82 acres off east side of the northeast quarter of the southeast quarter of said section; and the southwest quarter of section thirty-two (32), except 31.18 acres off west side of the northwest quarter of the southwest quarter of said section thirty-two (32); also the south one-half of the northwest quarter and the southwest quarter of the northeast quarter and west one-half of the southeast quarter of section thirty-two (32), all in township seventy-nine (79) north, range nineteen (19) west, fifth principal meridian; 295 also the following-described tract of land, commencing forty-two rods south of the northeast corner of lot No. three (3), in section one (1), township seventy-eight (78) north, range twenty-one (21) west, 5th principal meridian, run thence south forty-eight rods, west sixty-six $\frac{66}{100}$ rods, thence north forty-eight rods, thence east to place of beginning; and the said Harriet Rinehart hereby relinquishes all her right of dower in and to the above-described premises.

Signed the 28th day of March, 1878.

JEHU RINEHART.
HARRIET RINEHART.

In presence of—
G. W. HERTZOG.
M. A. BATEMAN.

STATE OF IOWA, }
Jasper County, } *ss*:

On this 28th day of March, A. D. 1878, before me, G. W. Hertzog, a justice of the peace in and for said county, personally came Jehu Rinehart and Harriet Rinehart, personally to me known to be

296 the identical persons whose names are affixed to the above deed as grantor-, and acknowledged the same to be their voluntary act and deed.

Witness my hand and — the day and year above written.

G. W. HERTZOG,
Justice of the Peace.

(Endorsed:) Quitclaim deed. Jehu Rinehart & wife to John Lyle. Filed for record the 25th day of April, A. D. 1878, at $2\frac{3}{4}$ o'clock p. m. Recorded in Book 97, page 232. W. Carrothers, recorder Jasper county, Iowa. Entered for taxation the 25 day of April, 1878. George R. Ledyard, county auditor. Recording fee, 50 cts., paid. Transfer fee, 25 cts, paid.

297 EXHIBIT No. 3. (S'g'd) Jas. K. Blish, Com'r.

Know all men by these presents that Loretta Shropshire and Alexander C. Shropshire, her husband, of Jasper county, State of Iowa, in consideration of the sum of one thousand (\$1,000.00) $\frac{\ }{100}$ dollars in hand paid, do hereby sell and quitclaim unto John Lyle, of Henry county and State of Illinois, all their interest in and to the following-described premises, to wit: The east eight and $\frac{82}{100}$ acres of the northeast quarter of the southeast quarter of section No. thirty-one (31) and the west thirty-one and $\frac{18}{100}$ acres of the northwest quarter of the southwest quarter of section No. thirty-two (32), all being in township No. seventy-nine (79) north, range No. nineteen (19) west, of the fifth principal meridian, in the county of Jasper and State of Iowa, the same being the homestead of the grantors herein, and the said Alexander C. Shropshire hereby relinquishes all his right of dower in and to the above-described premises.

Signed the twentieth day of March, 1878.

LORETTA SHROPSHIRE.
ALEXANDER C. SHROPSHIRE.

In presence of—

—— ——.

298 STATE OF IOWA, }
Jasper County, } *ss;*

On this 20th day of March, A. D. 1878, before me, a notary public in and for said county, personally came Loretta Shropshire, who is personally to me known to be the identical person whose name is affixed to the above deed as grantor, and acknowledged the same to be her voluntary act and deed.

Witness my hand and notarial seal the day and year above written.

ROBERT RYAN,
Notary Public.

STATE OF KENTUCKY, }
Fayette County. }

On this 25th day of March, A. D. 1878, before me, a notary public in and for the county of Fayette, State of Kentucky, personally came Alexander C. Shropshire, personally to me known *to me* to be the identical person whose name is affixed to the above deed as grantor*s*, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the day and year above written.

JOHN SHELBY,
Notary Public, Fayette County, Kentucky.

299 (Endorsed:) Quitclaim deed. Loretta Shropshire *et al.* to John Lyle. Filed for record the 14th day of May, A. D. 1878, at 11 o'clock a. m. Recorded in Book 97, page 240. W. Carrothers, recorder Jasper county, Iowa. Entered for taxation the 14th day of May, 1878. Geo. R. Ledyard, county auditor. Recording fee, —. pd. Transfer fee, 25 cts, paid.

300 EXHIBIT No. 4. (S'g'd) Jas. K. Blish, Com'r.

This indenture, made and executed the first day of May, A. D. eighteen hundred and seventy-seven, by and between Loretta Shropshire & A. C. Shropshire, of the county of Jasper and State of Iowa, parties of the first part, and the German Savings Bank of Davenport, Scott county, Iowa, a body corporate, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten thousand ($10,000.00) dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted and sold, and do by these presents grant, bargain, sell, convey, and confirm, unto the said party of the second part, its successors and assigns forever, the certain tract or parcel of real estate situated in the county of Jasper and State of Iowa, described as follows, to wit: The southeast quarter of section thirty-one (31), in township seventy-nine (79) north, range nineteen (19) west, of the
5th P. M.; also the southwest quarter and the south half of
301 the northwest quarter, and also the southwest quarter of the
northeast quarter, and also the west half of the southeast quarter, all in section thirty-two (32), in township and range aforesaid; also the following-described pieces of land: Commencing forty-two (42) rods south of the northeast corner of lot three (3), section one (1), township seventy-eight (78) north, range twenty (20) west, of the 5th P. M., thence running south forty-eight rods, thence west sixty-six $\frac{66}{100}$ rods, thence north forty-eight rods, thence east sixty-six $\frac{66}{100}$ rods to place of beginning, containing in all five hundred and forty acres, and being the same property partitioned to Mrs. Loretta Shropshire in the circuit court of Jasper county, Iowa, upon report of papers filed August 26th, 1876; to have and to hold the premises above described, with all appurtenances thereunto belonging, unto the said second party and to its successors and assigns

forever. The said Loretta Shropshire & A. C. Shropshire represent
to and covenant with the party of the second part that he has
good right to sell and convey said premises; that they
302 are free from incumbrance, and that he will warrant and de-
fend said premises against the lawful claims of all persons
whomsoever, and the said A. C. Shropshire hereby releases all his
right of dower in and to the said premises, and said parties of the
first part relinquish and convey all right of homestead in said
premises, this conveyance to be void on the following conditions:
That said Loretta Shropshire & A. C. Shropshire shall pay said Ger-
man savings bank or order the sum of ten thousand (10,000.00) dol-
lars, with interest on all of said money from May 1st, 1877, until
paid at the rate of ten per cent. per annum, payable semi-annually,
according to the one promissory note of the said Loretta & A. C.
Shropshire, dated May 1st, 1877; and it is stipulated in said note
and in this mortgage that should any of the said interest not be
paid when due it shall bear interest at the rate of ten per cent. per
annum from the time the same becomes due, and this mortgage
shall stand as security for the same; that said Loretta and
303 A. C. Shropshire shall pay all taxes and assessments levied
upon said real estate before the same become delinquent, and
in case not so paid the holder of this mortgage shall have the right
to declare the whole sum of money herein secured due and collecti-
ble at once or he may pay such taxes or assessments and be entitled
to interest on the same at the rate of ten per cent. per annum, and
this mortgage shall stand as security for such taxes and interest;
that said Loretta & A. C. Shropshire shall cause the buildings on
said premises to be insured and, during the existence of this mort-
gage, *keep* insured against loss by fire in some good company, to be
selected by mortgagee, in the sum of not less than five thousand
(5,000.00) dollars, loss, if any, to be payable to said second party,
and shall deliver policies and renewal receipts to said second party,
and upon failure to make insurance or to deliver said policy or re-
newal receipts said second party may make such insurance or
treat this mortgage as due, and, if he elects to make such in-
surance, he shall be entitled to interest on the amount
304 paid therefor at the rate of ten per cent. per annum, and this
mortgage shall stand as security for the amount so paid, with
interest as aforesaid. It is further stipulated and agreed that a fail-
ure to pay any of the said money, either principal or interest, within
ten (10) days after the same becomes due or a failure to perform or
comply with any of the foregoing conditions or agreements shall
cause the whole sum of money herein secured to become due and
collectible at once if the holder of said note so elect, and this mort-
gage may thereupon be foreclosed immediately for the whole of said
money, interest and costs; and it is further expressly agreed that,
in the event of any failure to pay said sums of money or part
thereof or the interest thereon when due and payable, said second
party shall be, and hereby is, authorized to take immediate posses-
sion of said property and to rent the same, and shall be held liable
to account to said first party only for the net profits thereof. It is

also agreed that the taking possession thereof as above pro-
305 vided shall in no manner prevent or retard said second party
in the collection of said sums by foreclosure or otherwise; and it is further agreed that in the event of the commencement of an action for the foreclosure of this mortgage upon any default being made that one hundred (100) dollars attorney's fee shall become due from the first party to the second party, and shall be paid in the event of a settlement before a decree of foreclosure shall be obtained; and if a decree of foreclosure shall be entered, then two hundred (200) dollars attorney's fees shall be taxed by the court and included in said decree.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

LORETTA SHROPSHIRE. [SEAL.]
ALEX. C. SHROPSHIRE. [SEAL.]

STATE OF IOWA,
Jasper County, } *ss*:

Be it remembered that on this 1st day of May, A. D. 1877, before
the undersigned, a notary public in and for said county, per-
306 sonally appeared Loretta Shropshire & Alex. C. Shropshire,
to me personally known to be the identical persons whose names are affixed to the foregoing mortgage deed as grantors, and acknowledged the said instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

ROBERT RYAN,
Notary Public.

"$10,000.00. Dated at NEWTON, IOWA, *May* 1, 1877.

"Three years after date we promise to pay to the order of the German Savings Bank of Davenport, Iowa, the sum of ten thousand (10,000.00) dollars at the German Savings Bank of Davenport, Iowa, with interest from May 1st, 1877, at the rate of ten per cent. per annum, payable semi-annually; also with ten per cent. per annum interest on interest in arrear and on any reasonable outlay provided for in this note or the mortgage securing the same. We further
promise to pay all reasonable costs of presentation and
307 collection of this note, including plaintiff's attorney fees,
if the same should not be paid when due, reserving the right to make payments of not less than $500.00 by giving 30 days' notice to payee.

"LORETTA SHROPSHIRE.
"A. C. SHROPSHIRE."

Upon which are the following endorsements:
$500, int. to Nov., '77, p'd Nov. 5, '77.
$500, int. to May 1, '78, p'd May 4, '78.
$500, int. to Nov. 1, '78, p'd Nov. 1, '78.

Pay to the order of John Lyle without recourse to German sav. bank.

H. LISCHER, *Pres.*

308 EXHIBIT No. 5. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

German savings bank.

No. 780. DAVENPORT, IOWA, *May 9th*, 1878.

Received of John Lyle, Esq., Kewanee, the sum of five hundred (500) dollars, being interest to May 1, '78, on a mortgage note for $10,000.00, as per endorsement on said note made by L. & A. C. Shropshire.

(500.00.) H. H. ANDERSON, *Cashier.*

309 EXHIBIT No. 6. (S'g'd) Jas. K. Blish, Com'r.

This indenture witnesseth that the grantors, Loretta Shropshire and Alexander C. Shropshire, her husband, county of Jasper and State of Iowa, for the consideration of fourteen thousand two hundred & fifty ($14,250) dollars, convey and quitclaim to John Lyle, county of Henry and State of Illinois, all interest in the following real estate, to wit: The southeast quarter of section thirty-one (31), also the southwest quarter of section thirty-two (32), also the south half of the northwest quarter of said section thirty-two (32), also the southwest quarter of the northeast quarter of said section thirty-two (32), also the west half of the southeast quarter of said section thirty-two (32), all of said land lying and being in township seventy-nine (79) north, range nineteen (19) west. of the fifth principal meridian, in the county of Jasper and State of Iowa; also the following-described tract of land: Beginning at a point forty-two (42) rods south of the northeast corner of lot number three (3), 310 in section one (1), in township seventy-eight (78) north, range twenty-one (21) west, of the fifth principal meridian, in the county and State last aforesaid, and running thence south forty-eight (48) rods, thence west sixty-six and $\frac{66}{100}$ ($66\frac{66}{100}$) rods, thence north forty-eight (48) rods, thence east to the place of beginning; and the said Alexander C. Shropshire hereby relinquishes all his rights of dower in and to the above-described premises.

Dated this first day of May, A. D. 1878.

LORETTA SHROPSHIRE. [L. S.]
ALEXANDER SHROPSHIRE. [L. S.]

Witness:
L. B. WESTBROOK.

STATE OF IOWA,
Jasper County, } *ss:*

I, L. B. Westbrook, a clerk D. C. in and for the said county, in the State aforesaid, do hereby certify that Loretta Shropshire and

Alexander C. Shropshire, her husband, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said
311 instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this 5th day of August, A. D. 1878.

L. B. WESTBROOK, *Clerk.*

(Endorsed :) (Copy.) Quitclaim deed. Loretta Shropshire *et marit.* to John Lyle. State of Iowa, Jasper county. This instrument was filed for record in the recorder's office of said county on the 5th day of August, A. D. 1878, at 9¼ o'clock — m., and recorded in Book 99 of Deeds, on page 72. W. Carrothers, recorder. Entered for taxation this 5th day of Aug., A. D. 1878. Fees p'd. Geo. R. Ledyard, aud.

312 EXHIBIT NO. 7. (S'g'd) Jas. K. Blish, Com'r.

This indenture, made this first day of March, A. D. 1879, between John Lyle, of Kewanee, Illinois, party of the first part, and Loretta Shropshire and Alexander C. Shropshire, her husband, of Jasper county, Iowa, party of the second part—

Witnesseth, That the party of the first part*y*, in consideration of the covenants of the party of the second part hereinafter set forth, do by these presents lease to the party of the second part the following-described property, to wit: The southeast quarter of section thirty-one (31), also the southwest quarter of section thirty-two (32), also the south half of the northwest quarter of said section thirty-two (32), also the southwest quarter of the northeast quarter and the west half of the southeast quarter of said section thirty-two (32), all in township seventy-nine (79) north, range nineteen west, of the fifth principal meridian, in Jasper county and State of Iowa; also the following tract of land: Beginning at a point forty-two (42) rods south of the northeast corner of lot No. three (3), in section No. one (1), in township seventy-eight (78) north, range twenty-one (21)
313 west, of the fifth (5th) principal meridian, in the county and State aforesaid, and running thence south forty-eight (48) rods; thence west sixty-six and $\frac{66}{100}$ rods; thence north forty-eight (48) rods; thence east to the place of beginning:

To have and to hold the same to the party of the second part from the first day of March, 1879, to the first day of March, 1880; and the party of the second part, in consideration of the leasing the premises as above set forth, covenants and agrees with the party of the first part to pay the party of the first part at — as rent for the same the sum of seventeen hundred dollars, payable as follows, to wit, on the first day of March, A. D. 1880.

The said party of the second part further covenants with the said party of the first part that at the expiration of the time mentioned in this lease peaceable possession of the said premises shall be

given to said party of the first part in as good condition as they now are, the usual wear, inevitable accidents and loss by fire excepted, and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above
314 promised to be paid the said party of the first part may, at
his election, either distrain for said rent due or declare this lease at an end and recover possession as if the same was held by forcible detainer, the said party of the second part hereby waiving any notice of such election or any demand for the possession of said premises.

And it is further covenanted and agreed between the parties aforesaid the covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

Witness the hands and seals of the parties aforesaid.

JOHN LYLE. [SEAL.]
A. C. SHROPSHIRE. [SEAL.]
LORETTA SHROPSHIRE. [SEAL.]

It is hereby agreed by and between the parties to the within lease that the terms thereof are extended one year from March first next upon the following conditions, to wit: The rent herein named is to be paid promptly as herein agreed; and, further, the
315 said tenants are to pay to the said John Lyle on March first
next the sum of fifteen hundred dollars, and on the first day of June next the further sum of fifteen hundred dollars, and on the first day of September next the further sum of fifteen hundred dollars; and it is hereby expressly agreed that if any of said payments are not made promptly on the day named, then in that case the within lease shall terminate and the said Lyle shall immediately at his election take possession of the within-described premises without any notice to said tenants whatever and retain and hold all crops that may be growing on said premises, and the said tenants agree to surrender said premises to said Lyle without any legal process whatever, hereby waiving all legal process or notice and agreeing to put said Lyle immediately into possession as aforesaid.

Witness our hands and seals this 27th day of January, A. D. 1880.

A. C. SHROPSHIRE. [SEAL.]
LORETTA SHROPSHIRE. [SEAL.]
JOHN LYLE. [SEAL.]

In presence of—
CHAS. K. LADD.

(Endorsed:) Lease from John Lyle to Loretta Shropshire *et al.*

316 EXHIBIT No. 8. (S'g'd) Jas. K. Blish, Com'r.

Copy.

H. Lischer, pres. L. Wahle, vice-pres. H. H. Anderson, cashier.

German savings bank.

Paid-up capital, $100,000; surplus, $35,000.

DAVENPORT, IOWA, *Nov.* 1, 1878.

C. S. Wentworth, cash., Kewanee, Ill.

DEAR SIR: In answer to your favor of the 31st ult. I will say d'ft for $500 duly received as money paid by John Lyle on int. on a mortg. note of Loretta & C. A. Shropshire to Nov. 1, '78.

Respectfully yours,

H. H. ANDERSON, *Cashier.*

317 EXHIBIT No. 9. (S'g'd) Jas. K. Blish, Com'r.

For value received, I, The German Savings Bank of Davenport, of the county of Scott and State of Iowa, do hereby grant, bargain, sell, and assign, transfer, and set over to John Lyle, of Kewanee, in the county of Henry, in State of Illinois, and to his heirs and assigns, a certain mortgage bearing date the first day of May, A. D. 1877, and made and executed to me by Loretta Shropshire and A. C. Shropshire, of the county of Jasper and State of Iowa; which said mortgage is duly recorded at pages 246, 247, 248 of Book 94 of Mortgages, in the office of the recorder of Jasper county, in the State of Iowa, and conveys to me, for the surety of a certain debt therein named, the tract of real estate situated in the county of Jasper and State of Iowa, as described in the said mortgage, as well as all my right and title in and to the premises in said mortgage and above described, the note to secure which said mortgage was given having been by me transferred to said assignee by endorsement without recourse, and I hereby covenant and agree with said assignee, for myself, my successors and assigns, that I have not 318 done or suffered any act whereby the right in said land acquired by me by virtue of said mortgage has or might be defeated, lessened, or impaired. It is particularly agreed and understood that the mortgage herein mentioned is assigned to the said John Lyle without recourse to the said German savings bank.

Witness my hand this second day of May, A. D. 1879.

THE GERMAN SAVINGS BANK, [SEAL.]
By H. LISCHER, *President.*

STATE OF IOWA,
Scott County, } *ss:*

Before me, the undersigned, a notary public in and for said county, this 2nd day of May, A. D. 1879, personally appeared H. Lischer, to

me personally known to be the identical person whose name is subscribed to the foregoing assignment of mortgage as maker thereof, and acknowledged the instrument to be his voluntary act and deed
for the use and purposes therein mentioned on behalf of the
319 said bank, of which I know him to be the president.

Witness my hand and seal notarial the day and year last aforesaid.

JACOB STRASSER,
Notary Public.

320 EXHIBIT No. 10. (S'g'd) Jas. K. Blish, Com'r.

("Copy.")

Ryan Bros, attorneys, West Side square.

NEWTON, IOWA, *May* 9, 1879.

John Lyle.

DEAR SIR: Enclosed please find note, mortgage, assignment, and insurance policy on the Shropshire business.

We paid 50 cents filing fee on assignment of mortgage. They preferred to assign rather than send release. This will answer as well, as you can now satisfy where you see fit.

Yours, RYAN BROS.

321 EXHIBIT No. 11. (S'g'd) Jas. K. Blish, Com'r.

GLEN FARM, IOWA, *July* 4, 1879.

Mr. John Lyle.

DEAR SIR: There was a man here a few days ago by the name of J. J. Prichard looking for a farm for his brother Robert Pritchard, Junior; now lives at Atkinson, Ill. He tells me they are well acquainted with you. I stated to him that any contract that they could make with you would be all right. I priced the farm at $45 *dollars* per acre. I told him one-third in hand, and the rest he could rune it with you by payin- ten per cent. I am putting up hay. It is very fine. Crops here is extra good. The white cow had twins last Sunday; is doing well. Horses and cattle are all doing well. My compliments to your wife and bring her with you the next time you come to see me. What has become of Dr. Cole? I have not heard from him since you left Iowa. I wish you would see him for
me and see if he has attended to the business I wrote to him
322 about. My compliments to the Dr. I would be pleased to
hear from you at any time. Can you send me the list of your State fair and your county fair?

Yours with respect, A. C. SHROPSHIRE.

323 EXHIBIT No. 12. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

GLEN FARM, IOWA, *Aug.* 5, '79.

Mr. John Lyle.

DEAR SIR: Your card was received; conten*se* noticed. I sent to Monroe on Monday expecting you to be on the train. Mr. Prichard was here and spent Monday with me looking at the farm; was much pleased with the farm; said he would have a talk with his boys on the matter, and will see you and me at Cambridge fair. I will be ther- with *Juell*, at your request. *Juell* is moving well since the season; he will make a fast trotter. The rest of the stock is doing well. We have not had a ra*ne* for several we*a*ks until*l* to-day. We had a light shower this morning. I have got nearly all my hay cut and up. I have cut about two hundred acres of timothy seed and got i*n* up in shocks ready to thrash. My corn looks well. My wife went to Kentucky on the cattle business; have not got home
yet; when she comes we will — up our busines th*ar*. My
324 compliments to your wife and friend. How was Will. Lyle
doing when you was there? Will be pleased to hear from
you again before the fair.

I am still your true friend,

A. C. SHROPSHIRE.

325 EXHIBIT No. 13. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

GLEN FARM, *Aug.* 13, 1879.

UNCLE JOHN LYLE: I have been to Ky. and returned Saturday. I made a compromise with Swope. He seemed to feel real sorry for me, and said he would do anything for me he could. I then asked him if he would relieve you, as you was growing old and had a great many cares, and that this was giving you a great deal of trouble, and he said for me to ask you what you would take for your land claim and you write him (Swope), as he was coming over in Ill. about the 20th and would come and see you and the farm. He said he would pay you $\frac{2}{3}$ down if you would wait on the balance; and, as you have proved yourself such a good friend to us, I want to do what is right, and, as you expressed yourself at different times you wished yourself out of this, I took the liberty to ask Swope to help me and at the same time you. If this does not suit you, of*f* course
do as you wish, but I feel like trying to save my home,
326 and if you conclude to let the man who wants to buy it have
it I want you to do as you promised. Is Etta married yet, and
how is aunt? Has her touch-me-nots bloomed? Alex. is coming over to Cambridge fair. I will close, as Pool is ready to go to Iowa.

As ever, your friend and well wishe*s*,

MRS. ALEX. SHROPSHIRE.

327 EXHIBIT No. 14. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

GLEN FARM, IOWA, *Oct.* 10, 1879.

Mr. John Lyle.

SIR: Your card came duly to hand. I wa-ted several days to hear from Col. Swope, of Ky., before answ-ring yours. I think by going to Ky. myself I can make arrangements to pay for the farm myself. I shall go to Ky. in a few days to see Swope, and on my return home I will call by Kewanee to see you on the matter.

Yours truly, A. C. SHROPSHIRE.

My compliments to your wife and inquiring friends.

328. EXHIBIT No. 15. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

GLEN FARM, IOWA, *May 29th,* 1880.

Mr. John Lyle.

DEAR SIR: I write you to know if you wish me to put the hogs on the market the first of June, or are you willing to let them run*e* some two or three we*a*ks longer, so they would be full fat-ed. They are doing very well now. I shall do what you think is best with them. I think it would pay to let them run two or three we*a*ks longer, for they are so well at present. The cattle are all doing very well. Eagle is doing good business. I have not heard a word from Pool since you left. Has he sent the note, as you wished him? If not, let me know, and I will go and see him at once. Uncle Johnny, if Jewell is not doing much, I wish you would send him to me as soon as poss*a*ble, so I can have him ready for the State fair. I am *su*rtain he would do better he*ar* than in Ill. You must be the
329 judge. I shall close, with compliments to your wife and friends, as ever,

Yours truly, A. C. SHROPSHIRE.

P. S.—We have had several very fine rain*es*. Corn is doing well. he*ar*. Wheat and oats and grass are coming out fine.

330 EXHIBIT No. 16. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

Office of Ryan Bros., attorneys-at-law.

NEWTON, IOWA, *June* 24, 1880.

John Lyle.

DEAR SIR: Enclosed please find draft, less exchange, $148.25, being amount of collections on books for services of horses; of this

$23.85 was collected on account of Comet; Black Jewel, 25.00; Banshaw, balance.

We returned 10 % as collections for *an* whole am't collected. We make statement as to horses an- what judgments were made, so you can credit to Shropshire this what — where entitled to it and ½ when only part belongs to him.

Yours truly, RYAN BROS.

331 EXHIBIT No. 17. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

GLEN FARM, IOWA, *June 30th*, '80.

Mr. John Lyle.

DEAR SIR: Your card came to hand. You stated in it you could not come unti*l*l you cut your rye. Now, Uncle Johney, I shall ask a favor of you, which I hope you will grant it. I want you to wa-*te* on me for the hog money unti*l*l September; if you will do it — will enable me to make you a good payment in Sept. The reason I ask it is, I am fixing a lot of short horn*e*s to sell off this fall. I also will have about 120 hogs to go off in September and Oct. My hogs is doing well; by Sept. they will bring me a good price. My heifers are doing well. I received a letter from Jo. Brock, of Ky., that he had received the $500.00 *dollars* and had the cattle and would ship them out to Iowa as soon as he could leave home. I told him if the cattle was doing well he could ship in
time for my sale. I will have it in Oct., so I can get the cattle
332 in fine fix. I want to get about 35 or 40 head to sell at the
sale, so I can make a good payment to you. I know all you want is what is right, and I shall work in that way. I am anxious to pay you and can do so by your kindness. You have been the best friend I ever had, and I shall never forget it in days to come. I have made arrangements to save most of my meadows for timothy seed. My corn is looking well. My small grain is doing well. Meadows are thin here in this State, but I think it will turn out a good quantity of seed; if so, I will have a nice thing of it. I am doing everything to get things in shape so I can turn it into money for you. You know it takes time to get things in the right shape. The book accounts will all be paid after harvest. I have seen a good many of the men and they promis- to pay the money at that time. Some of them are paying in now an- then. I hope you will — easy and give me all the time I ask so I can work with good faith. I know all you want is to know you will get your
money. You can rest easy on that with me, for I shall do
333 all is in my power as an honest man should do. My com-
pliments to C. K. Ladd. My love to Ernie Ladd. Compliments to your wife and self.

I remain your friend, A. C. SHROPSHIRE.

334 EXHIBIT No. 18. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

GLEN FARM, IOWA, *Aug.* 25, '80.

MR. LYLE: My kind friend, yours of the 14 inst. received. I started the next day to get a thrasher to thrash my timothy seed, and it commenced raining that day and has been raining ever since. The thrasher tells me the timothy will not do to thrash before the last of September. The seed is in a very tough state now, and he says I could not get half of the seed if I thrashed it before it gets rot-en enough. I c*a*ut all could be cut in both meadows east of the road; also cut all above the road, which will make about 250 acres or more of timothy to thrash. You can judge about how much I will have. The most of it was very good. I headed it all, and have it all ricked up in good order, and will thrash as soon as it will do, for I am anxious for you to get your money. I hate it very much, indeed,
not to have the money at the time I promised you for waiting
335 on me so patienc*e*ly. I know you will excuse me when you
see how I am placed, for I worked hard to get matters in shape to pay you at the time mention-. If the timothy turns out as most of timothy meadows has don- *hear* this season, I will have quite a nice thing of it. I hope so. My cattle are doing well, also my hogs are doing well. I want to have a cattle sale in October—about the last of the mo.; will sell about 25 head. The Ryan Bro. won't give what the farm is worth. I suppose they think you will sell to them at the-r own price. I tell them that you can hold it as long as the next man, for you ar- not compel-ed to sell. I am willing to sell whenever we can get enough to pay anything like the valu*r*e of the farm. I am willing to do all in my power to please you in the matter. I would be pleased to see you at any time you could come out and spend a few days and see how the things are looking and see for yourself. I shall do my best to get things in shape, so I can turn them into money to pay you. I talked to Jo. Long about the
horse. He won't buy. I am going to the Oskaloosa fair next
336 we*a*k and will see if there is any one there that wishes to buy
a fine horse. I wish he was *hear*, so I could take him to the State fair we*a*k after next. I believe he could be sold *hear*, but you must be your judge. My compliments to your wife and friend Doty; my love to Ernie Ladd; tell him to write me a long letter; compliments to Mr. C. K. Ladd. I remain your true friend, as ever,

A. C. SHROPSHIRE.

337 EXHIBIT No. 19. (S'g'd) Jas. K. Blish, Com'r.

MONROE, IOWA, *Aug.* 30*th*, 1880.

Mr. John Lyle.

DEAR SIR: I write you ther- was a gentleman by the name Quick looking at the farm, wishing to buy. He lives in your county, near Geneseo. He has 240 acres where he resides. He seems much pleased with the farm. He left here for Ill. to-day; expects to see you at Cambridge fair. I told him what I was offered for the farm by those parties lives near him. I also told him the money was going to you and for him to go and see you, and any contract you would make with him would be satisfactory to me; sell if you think best. I want you to be suited in the matter. I priced the farm at $42.50 per acre—the same the Irishman offered. You see now what I am willing to do. Sell at the $42.50 or 40 if you cannot do any better with him. I am anxious to pay you, so I can be a free man again. Don't you think it is the best way for me if you cannot sell to him? I am willing to do all I can, 338 paying you as fast as I can sell and collect. I shall do as you wish in the matter. Let me hear from you as soon as you see the gentleman.

I am, yours truly, A. C. SHROPSHIRE.

339 EXHIBIT No. 20. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

GLEN FARM, IOWA, *Oct.* 4, '80.

Mr. John Lyle.

DEAR SIR: Yours of the first inst. was received, stating you had sold the farm at $40.00 *dollars* per acre, but no papers drown yet. You also wish to know what time I could give possession of the farm. I will give possession at any time he can move in—any day. All I want is time to gather my corn crop and fix up what I wish to sell this fall. I would like to keep one of the stables and lot unti*ll* I can have a sale. He can take possession of the rest of the farm at any time. I want time to have a sale and sell what stock I have to sell, also a place to stay unti*ll* I can thrash my timothy. I can give possession of half of the house any day and one of the barns. Mr. Quick was at the Newton fair; thought he would stop as he came back; also said he would go and see you when he returned home. I want you to sell the farm as soon as possible and I will be 340 satisfied. Answer and let me know what will be don- and what time he will want the farm. I will let him have hay or anything else I have on the farm at a fair price.

I am, yours truly, A. C. SHROPSHIRE.

341 EXHIBIT No. 21. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

MONROE, IOWA, *March the 25th*, '81.

Mr. John Lyle.

DEAR SIR: I received a letter from you, wishing to know when I will have my sale. I will have it as soon as the weather will admit of it. I never witnes-ed such a winter in no country as we have had h*ear* up — to-day, snow & heavy winds, drifting the roads full in every direction; almost impossible to travel any place.

My wife has been quite sick ever since the 27 of Jan. last; had no help but the little girl. Woman help in this country is scarse and hard to get. I have done everything in my power to make matters move on smoothly. I have written to a *j*entleman in Indiana on that business of Wm. Lyle and have not received an*d* answer yet. I will write to another *j*entleman to-day on the subject, hoping he will answ-r immediately, so we will know what to do in the matter. The large mare has a dark iron-gray horse colt.
342 The old black mare is in fo*ld*. Will is working every chance
he has to get things in shape for spring. I will move out as soon as my wife is able to go. I will try to be as little trouble as possible to Will untill *l* I can get out, hoping this to be satisfactory to you and Will. All I want is to do what is right. My compliments to your wife and inquiring friends.

I remain, as ever, yours truly, A. C. SHROPSHIRE.

P. S.—I have never received but one letter from you since you was here. I wa-ted 'a few days, thinking I would hear from Indiana, so I could let you know what could be done in Will's matter.

343 EXHIBIT No. 22. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

MONROE, IOWA, *May* 19*th*, '81.

Mr. John Lyle.

SIR: I send you the notice that was left with me for Will Lyle by Mr. Jo. Long. I also state to you that George Washington has been drunk two-thirds of his time since you left the farm. He came very near running the black mare to death on yesterday to Monroe and back home. I understand he got some one to write you *sum* stories about me. I expect to have to send him to Kewanee in a box if he does not change his way of doing. I hope you and Mr. Jo. Long will make a trade that will su-t*e* you both. I will see to the farm and stock untill*l* you make other arrangements. If you rent the farm to Mr. Long you will not want the negro he*ar*. George sold the hay that Will bought for his horses, also the seed corn you sent he*ar* and all the eggs he can, and spends the money for whiskey.
Must I stop him from abusing your horses? If so, write to me
344 by Mr. Long and he will never *w*ride again to Monroe and
back as he did on yest*id*day. Mr. Long can tell you how he acted in town on yest*i*day. I am going to Newton on to-morrow; will find out all I can for you. I still remain,

Yours truly, A. C. SHROPSHIRE.

345 EXHIBIT No. 23. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

Office of Ryan Bros., attorneys-at-law.

NEWTON, IOWA, *October* 21, 1881.

John Lyle.

DEAR SIR: Your letter as to the corn has been shown Shropshire and he says he cannot pay anything on corn, as it is partly paid for. I would suggest that it would be best to buy out to Wilson. I think Long is carrying things with a pretty high hand and that if you follow his instructions and suggestions it will end in trouble. I do not speak of Mr. Wilson in particular, but of other matters as well. He is quarrelsome and overbearing. I was in Monroe yesterday and was requested to ask you- figures on the Shropshire farm and what allowance you would make for procuring a purchaser of it.

Yours truly, ROBERT RYAN.

346 EXHIBIT No. 24. (S'g'd) Jas. K. Blish, Com'r.

(Copy.)

Office of Ryan Bros., attorneys-at-law.

NEWTON, IOWA, *Nov.* 10, 1881.

John Lyle.

DEAR SIR: On the 22nd day of March, 1878, and 27th day of the same month we wrote you in relation to the settlement of matters between A. Rhinehart, Mrs. Shropshire, Mr. Shropshire, and John Rhinehart, in which you was interested in a loan you proposed to make on the farm.

Will you please send those letters to us, as we shall probably need them to use in evidence? Please attend to us at once, as we shall require the letters very soon.

Yours truly, RYAN BROS.

347 **Exhibit No. 25.** (S'g'd) Jas. K. Blish, Com'r.

Consolidated taxes.	Mills.
State	2
County	$2\frac{1}{2}$
Bridge	1
School	1
Insane	$\frac{1}{2}$
Poor	1
Conti-gent	
Teachers	
School-house	
Total	

$110.25. No. 25.

Treasurer's office, Jasper county, Iowa.

FAIRVIEW T'W'P,
NEWTON, *Jan'y* 26, 1880.

Received of John Lyle one hundred & ten $\frac{25}{100}$ dollars in full of the following taxes for the year 1879 and the following-described real estate:

Kind of tax.	Amount.	Description of land and town lots.	Sec. or lot.	T'w'p or bl'k.	Rng.	Acres.	Value.
Consolidated	70 20	S. E. $\frac{1}{4}$	31	79	19	160	4,000
Conti-gent		S. W.	32	"	"	160	3,000
Teachers		S. $\frac{1}{2}$ N. W.	"	"	"	80	600
School-house		W. $\frac{1}{2}$ S. E.	"	"	"	80	800
Road	40 05	S. W. N. E.	"	"	"	40	250
Corporation		E. $\frac{4}{5}$ N. $\frac{5}{9}$ S. $\frac{9}{13}$ lot 3.	1	78	20	20	125
Poll							
Costs							
Total	110 25						
Interest							
Total and int.		110					

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and, if any error exists, to return the same at once for correction.

(Signed) D. G. WINCHELL,
Treas. Jasper Co., Iowa.

(Signed) S. H. GALUSHA, *Deputy.*

348 EXHIBIT No. 26. (S'g'd) Jas. K. Blish, Com'r.

Consolidated taxes.	Mills.
War and defense	$\frac{1}{2}$
State	2
County	$2\frac{1}{2}$
Bridge	1
School	1
Poor	1
Conti-gent	
Teachers	
School-house	
Total	

$122.85. No. 18.

Treasurer's office, Jasper Co., Iowa.

FAIRVIEW T'W'P,
NEWTON, *Jan'y* 17, 1881.

Received of John Lyle one hundred & twenty-two $\frac{85}{100}$ dollars in full of the following taxes for the year 1880 on poll, personal property, and the following-described real estate:

Kind of tax.	Amount.	Description of lands and town lots.	Sec. or lot.	T'w'p or bl'k.	Rng.	Acres.	Value.
Consolidated	70 20						
Conti-gent		S. E. $\frac{1}{4}$	31	79	19	160	4,000
Teachers	17 55						
School-house		S. W. $\frac{1}{4}$	32	79	19	160	3,000
Road	35 10						
Corporation		S. $\frac{1}{2}$ N. W. $\frac{1}{4}$	32	79	19	80	600
Pauper							
Poll		W. $\frac{1}{2}$ S. E.	32	79	19	80	800
		S. W. $\frac{1}{4}$ N. E.	32	79	19	40	250
Costs							
Total	122 85	E. $\frac{3}{5}$ N. $\frac{5}{9}$ S. $\frac{9}{13}$ lot 3.	1	78	20	20	125
Interest							
Total and int.		111					

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and, if any error exists, to return the same at once for correction.

(Signed) D. G. WINCHELL,
Treas. Jasper Co., Iowa.
—— ——, *Deputy.*

349 EXHIBIT No. 27. (S'g'd) Jas. K. Blish, Com'r.

Consolidated tax.	Mills.
State	2
County	2½
Bridge	1½
School	1
Insane	½
Poor	1½
Conti-gent	
Teachers	
School-house	
Board of health	
Spec. township	
Cemetery	
City	
Total	

143.97. No. 114.

Treasurer's office, Jasper Co., Iowa.

FAIRVIEW T'W'P,
NEWTON, *Feb'y* 16, 1882.

Received of John Lyle one hundred & forty-three $\frac{97}{100}$ dollars in full of the following taxes for the year 1881 on poll, personal property, and the following-described real estate:

Kind of tax.	Amount.	Description of lands and town lots.	Sec. or lot.	T'w'p or bl'k.	Rng.	Acres.	Value.
Consolidated	77 38	S. E. ¼	31	79	19	160	3,840
Conti-gent	8 61						
Teachers	21 50	S. W.	32	79	19	160	2,880
School-house							
Road	35 98	S. ½ N. W.	32	79	19	80	5 16
Corporation							
Poll	50	S. W. N. E.	32	79	19	40	240
Costs		W. ½ S. E.	32	79	19	80	768
Total	143 77	E. $\frac{4}{5}$ N. $\frac{5}{9}$ S. $\frac{9}{13}$ lot —.	1	78	20	20	120
Interest		112					
Total and int.		Personal					175

NOTICE.—The holder of this receipt is hereby notified to compare same with his title papers without delay, and, if any error exists, to return the same for correction.

(S'g'd) D. G. WINCHELL,
Treas. Jasper Co., Iowa.
—— ——, *Deputy.*

350 *Deposition of James K. Blish, Taken May 16th*, 1885.

My name is James K. Blish; age, 43; occupation, a lawyer; residence, Kewanee, Ill. I have known the defendant, John Lyle, for thirty years.

I was somewhat acquainted with A. C. Shropshire while he lived here in Kewanee and have met him several times since. My acquaintance with Mrs. Shropshire is very limited. I saw her three or four times at Newton, Iowa, in March, 1878. I have heard of her being here, but I never saw her here. I was never present at any accounting between the parties and know nothing about it.

I know that complainant made a deed to the defendant conveying the lands in controversy, but I know nothing about the agreement or talk between them. There was very little talk in my presence and I did not hear complainant say that the deed was to secure a loan.

Some time in the month of March, 1878—about the 20th, I think—I went to Newton, Iowa, in company with John Lyle,
351 the defendant, and Dr. Cole, of this place, in connection with
some business between the complainant and defendant concerning the land in controversy in this suit. I had no previous knowledge of their dealings in regard to this or other matters, and only went along for the purpose of examining the title to the lands and of seeing that the papers were in satisfactory shape. The most of the talking was done at the farm and not in my presence. I had nothing to do with the bargain or trade or whatever it was. Dr. Cole and Mr. Lyle went out to the farm, as I was told, and I was devot*ed* myself to the work of looking up the title to the land and also what judgments, execution sales, or tax sales there were which would be liens on the land.

I can only state the nature of the transaction between the complainant and defendant in a general way, as I gather it from their talk, not having any previous knowledge of it. The complainant had become deeply involved in debt, and in addition to a mortgage upon the farm for $10,000 she was owing other parties
352 some $4,000. The farm had been sold with the exception of
the homestead upon an execution and had been purchased by John Rheinhart, a brother of the complainant. Mr. Lyle, the defendant, had been very friendly with A. C. Shropshire while here in Kewanee, and also with complainant after her marriage with A. C. Shropshire, and the object of the business was to have defendant assume the liabilities, take title to the land, and allow complainant and her husband to go on with the business on the farm and pay it up if they could. I do not know as I heard the word purchase or loan used in all the talk between them. Defendant was stepping between complainant and those who were pressing her in order to give her a chance to work out, and as a friendly act. After satisfying defendant as to the title and posting him as to what liens I found on the records and after considerable talk and some delay the matter was brought to a head and deeds were made of the lands in controversy by John Rhinehart and wife and by the complainant and her husband to defendant, John Lyle. Most of this was done in the office of Ryan Bros., in Newton; Smith and Wilson, a
353 firm of attorneys at Newton, were called in as trustee for Mr.
Lyle, and it was agreed that they should attend to the application of the money that Mr. Lyle should send out for the extinguishment and satisfaction of the liens and claims against the land. We were in Newton three days.

Cross-examination of J. K. **Blish**:

I went out to Newton with Mr. Lyle and Dr. Cole, and was present at some of the talk between Mr. Lyle and Mrs. L. Shropshire.

She was endeavoring to induce Mr. Lyle to step in and assume certain liabilities on the farm and to furnish money enough to remove all claims on the place and to get them into his hands — to give her and her husband a chance to work out and pay off the debts. This he did, taking a title to the place in his own name; whether they called it a loan or a purchase in their talk, I do not know. I have stated the facts and you can call it what you please. I can only say that the land was conveyed to Mr. Lyle under the circumstances I have mentioned. She did execute a deed to Mr. Lyle conveying her homestead, as I
354 have said before. Such a deed was made, but I cannot state the purpose any more definitely than I have done. I heard only a small portion of the talk and cannot say that no talk was had during the negotiations of an absolute sale. As I have before said, I did not hear the word "sale," "purchase," or "loan" used at all that I remember of. I cannot state that Mr. Lyle declined to purchase the land at that time absolutely. I do not know that I have heard Mr. Lyle, since the visit at Newton in 1878, make any statements in relation to the character of the negotiations between himself and Mrs. Shropshire at that time. I do not know that Mr. Lyle sent to Newton a sum of money shortly afterwards for the use of Mrs. Shropshire excepting from Mr. Lyle's own statement. He said he sent $4,250. He did not state to me that it was a loan, and that he was secured for the repayment of the money by holding deeds to the land. I was not present at any conversation at Kewanee between the defendant and Mrs. Shropshire before I came to Newton. I went to Newton because I was hired to go. I do
355 not know what the impelling motive of Lyle and Dr. Cole was. My understanding was that John Rheinhart bought all of the land except the homestead. I had no talk or negotiation with John Rheinhart. I do not know whether Mr. Lyle did or not. I did not go to the farm with them. John Rheinhart and wife made a quitclaim to Mr. Lyle. I do not know who procured him to make it. I do not know whether John Rheinhart made the quitclaim deed at the request of Mrs. Shropshire. I was not present at any accounting. I never saw Mrs. Shropshire at Kewanee in May, 1878. I prepared a contract between John Lyle and Dr. Cole in relation to this land in controversy. The data for the contract was given me by Mr. Lyle and Dr. Cole together and covered the land and the stock also. It was understood at the time that Dr. Cole was only a trustee for the Shropshires, but they were not mentioned in the contract. The contract was drawn up in duplicate and signed by Mr. Lyle and remained in my office some time. Just what the hitch was I do not know, but Mr. Lyle came and took them away. I do not know where that contract is now nor what became of it. I cannot attach a copy to my deposition.

356 *Joseph G. Long, Taken April* 28, 1885.

Joseph G. Long; age, 57; residence, Fairview, Jasper county, Iowa; occupation, farming and stock-raising; have resided at or near my present residence about twenty years.

I own three hundred and eighty (380) acres of land in Jasper county. I am acquainted with real estate in range 19, t'p 79, Jasper county, Iowa, and was so acquainted in 1880.

I know the situation and location of the 540-acres farm in said township now owned by John Lyle and formerly owned by Mrs. Shropshire and the subject of controversy in this suit. It was in bad shape in the fall of 1880. The fences and buildings were in bad repairs. The roof of the house leaked. One of the sills of the porch to the house was rotten and had to be replaced by a new one. The house needed painting, which I had done. The barn was in bad repair. The windows were all out in the west end. When a heavy wind came, the windows being out, it rocked the barn to the extent of throwing the two front walls out of line as much as two inches on the east end of the barn; also bursted the tie-
357 beams from the top of the outside posts so it lacked about an inch of dropping down. It cost a good deal of labor and expense to get them back to their place and fastened. The barns was generally in bad repair. I paid out between $800 and $1,000 on the repairs of the farm fences and buildings for Mr. John Lyle in the year 1881. This was the condition of the farm in the spring of 1881. Mr. John Lyle told me he would sell it at $40.00 an acre, or less if he couldn't get $40.00. I think it could be sold at that time for $35.00 per acre cash, and not more.

Mr. Shropshire told me at the time I started to Kewanee to rent said farm to John Lyle; that he saw that Mr. Lyle didn't want to rent us the farm any longer; that he would give possession to me any time I demanded it if I rented it. This conversation occurred on the sidewalk in Monroe, between Dalrymple's hotel and the depot. At the time we was talking the telegraph operator at this station came to us with a dispatch from Mr. John Lyle, from Kewanee, stating in the despatch that the farm was sold, and that if I would not come and rent it. I handed this despatch to
358 Mr. Shropshire. He read it and stated to me he saw that Mr. Lyle did not want to rent it to him any more, and requested me to go at once and rent it. I stated to him that I wouldn't go to rent the farm from John Lyle unless he would write a letter to John Lyle and send by me to rent the farm to me, and also read the same to me before he sealed it, which he did. So I went and rented the farm, and he gave me possession, as I desired them to do, and he moved away. I heard Mr. Shropshire say that they would get the farm back if John Lyle gave the farm to his grandson, Wm. Lyle.

I don't know anything else, only this, that John Lyle came here twice to settle with Mr. and Mrs. Shropshire, but he could not get a settlement out of them, as stated to me by Mr. Lyle.

Cross-examination of **Joseph G. Long**:

I am a brother of the plaintiff's first husband, who built all the
buildings on the land. It is a large and substantial farm-house. I
don't remember the year it was built. There are eight rooms
359 and hall down-stairs; there are five rooms and hall upstairs.
There is a porch and veranda on the "L," on the east side.
I cannot give the dimensions, but it is a large two-story native
frame building. The outside doors are native walnut, made by
hand. The inside of the house, in two or three rooms, was sealed
with walnut about three or four feet high. There was heavy moulding
over the window, to which the lambrequins were fastened. The
mouldings were fastened to the walls by large screws. When Mrs.
Shropshire went away she tore the mouldings from the wall and
took them away with her. The house was situated on the homestead.
There was no furniture left in the house. Mrs. Shropshire
took it all away with her or had it taken by her order. It cost a
great deal more than even what it was worth—it cost about $9,000—
as the carpenters sawed the corner posts down four feet, making
both stories, upper and lower, on an average of two feet
too low, which destroyed the proportions of the house. In 1878
I don't consider it was worth more than half or two-thirds
of what it cost. There was not in 1878 a large barn standing
on this land, on the homestead part. They were on
360 another forty just west of the homestead part. The section
line runs between the house and barn. That is all the building
on the homestead except wood shed, coal-house, and smokehouse,
which were all in one building. The barn is a large barn,
I think fifty by seventy or eighty. I suppose it was worth $6,000,
basement and all. There were no other buildings except what I
have mentioned, except an outhouse worth ten or fifteen dollars.
The building was worth probably $200. The 540 acres was about
an average class of land. Probably it might be $5.00 an acre better
than the average, taking the buildings off. It was all fenced except
where the river run by the land, where it could not be fenced. The
fences in 1878 had run down somewhat compared with what they
were at my brother's death. That farm was not as good as any in
the county in 1878. I think it was not as good as my farm, but it
was better an average than farms in that neighborhood.

As far as I am concerned I guess I am on friendly terms with
the plaintiff, but they do not like me very well. They are
361 trying to beat me out of some money, and of course that does
not make very pleasant feelings between us. There is now
litigation pending between me and the plaintiff. I held possession
of the land under John Lyle from June 1st, 1881, till March 1st,
1881.

362 *Javan Chamberlain, Taken April 28th,* 1885.

My name is Javan Chamberlain; age, 43 years; am a farmer; reside in Fairview t'p, Jasper county, Iowa. I don't own any lands in Jasper county. I am acquainted with what is known as the

Shropshire farm in Jasper county, now owned by Mr. Geo. Lyle and was acquainted with it in 1878–1880. If I had it I would hav wanted $60.00 per acre for it in 1878–'80.

Cross-examination :

I was superintendent or manager for Jesse Long in his lifetime I helped to repair the fences already built on the land set off to plaintiff after the death of her husband, and put in some new fence. I was superintendent only one year, and that after the death of Jess Long. I was employed on said farm when the house and barn an some other buildings were erected by Jesse Long. The house wa a very large, fine, two-story building, well furnished inside and out
There are thirteen rooms and two halls in the house. The
363 house was built in the — 1869, as near as I can remember,
and cost, as near as I can recollect, a little over $9,000. There were two barns on the 540 acres of plaintiff in 1878—one for stock and the other, the main barn, for hay and stock. The main barn was a large building. Its dimensions were 60 by 80, I think. The stock barn is a long, narrow building, adapted entirely for the use of stock. There were three rows of stalls for stock. There was a scale-house on the widow's land, a smoke-house, shop, and woodshed, all in one building. There was also a log house, used for cribbing corn. There was a fine board fence on the land in 1878—pine boards and oak posts. It was all under fence. Part of the fence, about eighty rods, consisted of rails.

I call it first-class land and all under cultivation. It consisted of meadow and pasture. It was the best farm, to my knowledge, in Jasper county. The way I understand it is that when Mrs. Shropshire deeded the homestead by quitclaim deed to Mr. Lyle, and John Rhinehart deeded the land, he bid off in some way that it was for the purpose of securing a loan from Mr. Lyle to pay off some debts of hers.

364 The way I understand it—to the best of my knowledge,
John Lyle, the defendant, has stated to me in substance that he had loaned Mrs. Shropshire some money and held the deeds to her lands to secure himself.

365 *Joseph Jones, Taken April 28th*, 1885.

Name is Joseph Jones; age, 52 years; am a farmer; reside in Fairview t'p, Jasper county, Iowa. I have lived there a little over thirty years, the first part of that time on the farm in controversy. I am an owner of real estate in Jasper county, Iowa. I own seven hundred acres. I am well acquainted with real estate in range 19 west, t'p 79, Jasper Co., Iowa. I was also acquainted with the same in 1880. I know the situation and location of the 540-acre farm in said township now owned by John Lyle and formerly owned by Mrs. Loretta Shropshire and now the subject of controversy. In the fall of 1880 the fences and buildings were in bad repair, and at that time the farm was running down. I would think the farm in the fall of 1880 was worth $50.00 per acre.

Cross-examination:

Most of the land is second bottom, first-class farming land. It is
all in cultivation except twenty acres of timber land. It was
366 all under fence except the twenty acres of timber, being a
five-pine-board fence, with oak posts and fenced off in ordinary fields. The house is a large two-story dwelling-house—one of the largest in the country. The main barn is composed of basement and upper story. I think the size is about 60–80 ft. The stock barn is a barn with a driveway through it about one hundred ft. long, with three rows of stall-. There are several small out-buildings, such as smoke and wood house and shop combined and one log house used for cribbing corn. The forty acres included in and occupied by plaintiff as a homestead, including the buildings thereon, in my opinion, was worth $10,000. The homestead includes all the buildings except the log house.

367 *Robert Johnson, Taken April* 28, 1885.

Name is Robert Johnson; age, 45; occupation, that of a farmer; residence, Fairview t'p, Jasper Co., Iowa, and have resided there thirty-five years. I don't own any real estate now. I am acquainted with the value of real estate in range 19 W., t'p 79, Jasper Co., Iowa, and was so acquainted in 1880. I know the situation and location of the 540 acre- in said township now owned by John Lyle and formerly owned by Mrs. Shropshire and now the subject of controversy in this suit. I don't know what was its condition as to repairs in the fall of 1880. I think the cash value of the land is $55.00 per acre.

Cross-examination:

The soil of the 540 acres is as good as there is in Iowa. Most of the land is second bottom land. It was all in cultivation in 1878, except twenty acres of timber. It was all under fence, separated into ordinary fields. The fence consisted of five-pine-board fence, with oak posts. All the buildings on the place was on the homestead.

368 *Deposition of George Lyle, Taken April* 28, 1885.

My name is George Lyle; age, 29 years; occupation, farming; residence, Fairview t'p, Jasper Co., Iowa, and have resided there a little over two years. I am an owner of real estate. I own 540 acres in Jasper county, Iowa. I am acquainted with the value of real estate in range 19 W., t'p 79, Jasper county, and was so acquainted in 1880. I know the situation and location of the 540-acres farm in said t'p now owned by John Lyle and formerly owned by Mrs. Loretta Shropshire and now the subject of controversy in this suit.

The fences were in terrible bad condition all over the farm in the fall of 1880. The barn doors, windows, and floors were in bad condition. The doors were off, windows out, floor was rotten, sills were

partly rotten all the way through the barn. The house was in bad repair, and it cost from $500.00 to $600.00 to place the house in its former condition. I think thirty-five dollars an acre would have been a good price for it in the fall of 1880. In the spring of
369 1880 I was at the farm. I heard both Lorretta Shropshire and her husband say that John Lyle was the best friend they had on earth.

I did not hear anything said about the lease of the farm. I heard her say that she would have to give the farm up; that Shropshire was no manager and never could pay for it.

Shropshire said my brother would have one of the finest farms on earth when he moved here.

Cross-examination:

I am the defendant's grandson. There are relatives of John Lyle living besides my brother and myself. I have a sister; he has brothers and their children. The defendant has given me but very little since I started for myself. He has some notes for stock I bought of him, amounting to $1,600.00 to $1,700.00. I am one of the nearest relatives, my brother and my sister being as near relatives as myself. I took possession of the land involved in this suit March 2nd, 1883, but I bargained for the farm in Dec., 1882. Joseph Long had it rented till that time. I lived in Illinois in 1880. In 1881 and 1882 I lived in Afton, Union county, Iowa.

370 EXHIBIT NO. 16.

Office of Ryan Bros., attorneys-at-law.

NEWTON, IOWA, *June 24th*, 1880.

John Lyle.

DEAR SIR: Enclosed please find draft, less exchange, $148.25, being amount of collection on books for service of horses. Of this $23.85 was collected on account of Comet; Black Jewel, $25.00. We retained ten per cent. as collections on the whole amount collected. We make statements as to horses on which judgments were made, so you can credit to Shropshire the whole where entitled to it and one-half when that part belongs to him.

Yours truly, RYAN BROS.

(A copy of the aforesaid letter and not the original is attached to the deposition of John Lyle. PH. & D.)

EXHIBIT NO. 19.

MONROE, IOWA, *Aug. 30th*, 1880.

Mr. John Lyle.

DEAR SIR: I write you there was a gentleman by the name
371 of Quick looking at the farm, wishing to buy. He lives in your county, near Geneseo. He has 240 acres where he lives. He seems much pleased with the farm. He left here to-day for Illi-

nois. Expects to see you at Cambridge fair. I told him what I was offered for the farm by those parties lives near him. I also told him the money was going to you and for him to go and see you and any contract you would make would be satisfactory to me. Sell if you think best. I want you to be suited in the matter. I priced the land at $42.50 per acre, the same the Irishman offered. You see now what I am willing to do. Sell at the $42.00 or $40.00 if you cannot do better. I am anxious to pay you so I can be a free man again. Don't you think it is the best way for me? If you cannot sell to him I am willing to do all I can, paying you as fast as I can sell and collect. I shall do as you wish in the matter. Let me hear from you as soon as you see the gentleman.

I am, yours truly, A. C. SHROPSHIRE.

(A copy and not the original of the foregoing letter is attached to the deposition of John Lyle.)

372 EXHIBIT NO. 20.

GLEN FARM, IOWA, *Oct. 4th*, 1880.

Mr. John Lyle.

DEAR SIR: Yours of the 1st inst. was received, stating you had sold the farm at $40.00 an acre, but no papers drawn yet. You also wish to know what time I could give possession of the farm. I will give possession at any time; we can move in any day; all I want is time to gather my corn crop and fix up what I wish to sell this fall. I would like to keep one of the stables and lot until I can have a sale. He can take possession of the rest of the farm at any time. I want time to have a sale and sell what stock I have to sell, also to stay until I can thrash my timothy. I can give possession of half of the house and day and one of the barns. Mr. Quick was at the Newton fair; thought he would stop as he came back; also said he would go and see you when he returned home. I want you to see the farm as soon as possible and I will be satisfied. Answer and let me know what will be done and what time he will want the
373 farm. I will let him have hay or anything else I have at a fair price.

I am, yours truly, A. C. SHROPSHIRE.

(A copy and not the original of the foregoing letter is attached to the deposition of John Lyle.)

374 LORETTA SHROPSHIRE
vs.
JOHN LYLE.

Plaintiff's Rebutting Evidence.

375 LORETTA SHROPSHIRE
vs.
JOHN LYLE.

Rebutting Evidence.

Testimony of Loretta Shropshire, Taken Aug. 5th, 1885.

Int. 1. Loretta Shropshire; age, 45 years; reside in Newton, Jasper Co., Iowa; am complainant in this action.

Int. 2. No settlement was made at the time when a writing was put upon the back of a lease at my house. The lease was given for no other purpose but to protect Lyle against my other creditors and to pay whatever we could of Mr. Lyle's claim. The lease was made in 1880, and dated back. It was never read to me, nor was I in the room when it was written. I was sick at the time. My husband came in with the papers and told me what Lyle had said was the best for me to protect him from my other creditors. There was no accounting or settlement made in my presence or hearing at that or any other time. The lease and writing on the back extending was all made at the same time. 376

Int. 3. John Lyle has not at any time delivered or offered to deliver to me or surrender the note and mortgage made by me to the German savings bank. He still holds the note to the German savings bank and the mortgage.

Int. 4. John Lyle came over in October, 1880, and we talked of the sale of the land, and I told him I would not take less than $42.50 per acre for the land, as was agreed to by the man he sent out to buy the land and also by Lyle himself by letter—said letter is attached to my former deposition—and he then agreed that the price of the land should be $42.50 per acre, and that is the price he took it at.

Int. 5. Lyle in his deposition says he first saw me at Ottumwa, which is a mistake. The first time was at home when I was married, my husband having invited him. I never had any personal acquaintance with him till the year 1878, when I got the loan of this money. He also says that I agreed to take $40.00 per acre for the whole farm and that all my husband owed him should be reckoned in. 377 That is not true, for I never agreed to anything of the kind, as we had never had any settlement. He also claims that at the time the deeds were made that my husband and I owed him $1,400.00 and $600 for a half-blood Clydesdale stallion and $50.00 for two hogs which he sold us, besides a $1,000 note. I never either bought or authorized to be bought any stock of Lyle, neither did I give him any note to that effect. He also says that he went to Kentucky to buy stock for me. He says he redeemed Black Eagle and paid $700 for me. He never bought any stock by my request or consent. He

sent Black Eagle to the farm, but kept him in his own name and continued to keep him until he died, in the spring of 1883. He also claims he sold me a sorrel*l* stallion, "Star of the West," for $200, and four or five short *short* horned cattle for $800, which is utterly false, as I never had any such transaction with him, only the borrowing of this money, and never purchased any stock of him. He
mentions me going to Kentucky with him. I did go with
378 him, and I did not buy any stock nor did I go for that pur-
pose. My husband was in Kentucky sick at that time. He did buy my ticket from Chicago to Georgetown, and I offered to pay him, and he said never mind and refused to take it, and he also says that I wanted him to buy several stallions in Kentucky, which is not true, for I did not even know when he bought "Black Joe" and never asked him to purchase stock for me while there, as he claimed he was there on business with one Gus. Shropshire. I knew nothing about his business. He claims he sold me the stallion "Black Joe" in the fall of 1880, which is not correct. He also claims he sold me two barrel*ls* of vinegar. I bought no vinegar of him. He shipped two barrel*ls* of vinegar from Kewanee, Illinois. One barrel was to be sent to his grandson, Geo. Lyle, at Afton, Iowa, and the other was for Will Lyle, who was on the farm at that time. On the way from the R. R. station one barrel sprung aleak, and by the time they got home the vinegar was all leaked out. The other barrel was left in the cellar when we
came away. The stoves he mentions were put in Jan., 1880,
379 for Will Lyle to use. The heater Will brought there from
Afton. I never used it, for it was too small, but I did cook in the cook-stove, but did not injure it more than ordinary usage would a cook-stove. It is still on the farm, and has been used by all the tenants until Geo. Lyle took possession.

He further says that he bought 43 hogs of us, and that we killed two after he bought them. That is also false. If they were minus two they might have been killed by some one else or have died, but they were not killed by me or any one in my employ. I have read over Wm. Lyle's deposition, in which he claims to have bought the black mare and colt. We never sold him any stock, as he did not have anything to buy with and was living with his grandfather, and his grandfather never allowed him to buy anything, as he, Will, was going with a girl his grandfather did not like, that he, Will, finally married, and the old gentleman finally succeeded in separating them by promising to give Will the Glenn farm owned by me
at that time and purchased by John Lyle the fall of 1880.
380 George Lyle and Wm. Lyle never had anything only what
their grandfather gave them, as they both left their wives and did not dare to own anything. Geo. Lyle's present wife told me in the presence of Mrs. John Rheinhart, when I asked her if they had bought that farm, that they had not, but that George's grandfather told them to move on the farm, and that they could have all they could make off it until he could sell it, and they did not buy it, for they had nothing to buy with. Will Lyle also says that he was present and heard his grandfather, John Lyle, and our-

selves talk about $40.00 per acre for the farm; he, Will Lyle was never present or at the farm when his grandfather was but once, and that was in the spring of 1879, when John Lyle purchased 25 head of cattle, and he, Will, and one Thomas Long drove them to Afton for John Lyle. We never talked about $40.00 per acre, and nothing of the kind ever was talked about.

Cross-examination:

381 Int. 1. John Lyle has not demanded payment of the German savings bank note from me since I removed from the farm.

Int. 2. He did not on more than one occasion say to me that the mortgage was cancelled and the note was at my disposal, or words to that effect. I never saw Lyle after January, 1880, and have not seen him since. I never sold John Lyle my farm but once.

Int. 5. I did not at any time demand of John Lyle the German savings bank note and mortgage. We never had.

Int. 7. I did not demand the note and mortgage for the reason that we have never had a settlement or any accounting, and I never have had an opportunity to demand them.

Int. 8. I have no letters in my possession or under my control written by John Lyle not already in evidence.

Int. 9. I furnish my own money to pay the expenses of this litigation.

Int. 10. My husband and I have paid in cash in this case, by way of expenses, about $50 or $60.

Int. 11. I am indebted to David Ryan as one of my bondsmen and for attorney's fees.

Int. 12. David Ryan was one of the sureties on my administratrix bond, and my bondsmen were adjudged to pay quite a 382 large amount by reason of my failure to account, but they were in nowise interested in this suit.

383 *Testimony of George H. Wilson, Taken July 27th*, 1885.

Int. 1. George H. Wilson; Jasper county, Iowa; age, 51; farmer.

Int. 2. Am acquainted with the parties to this suit.

Int. 3. I sold to John Lyle, individually, 1,000 bushels of corn, and delivered it on the Lyle farm. Mr. Lyle was there himself when the first of it was delivered, and it was fed on the place. I delivered to Lyle 700 bushels, and he transferred the contract to Joe Long, and requested me to deliver the balance to him. Had to look to him (Long) for my pay, which I refused to do, and the last 300 was not delivered. Lyle paid me for the 700 bushels himself; think I sold him the corn three years ago this spring.

Int. 4. I don't know anything about the hay.

Int. 5. In the first place, Mr. Lyle bought thirty brood sows from Mrs. Shropshire, and afterwards about forty head more, making seventy head in all. This Mr. Lyle told me himself.

Int. 6. I knew at the time I delivered the corn Mrs. Shropshire had considerable on the place, and I know that Lyle used it. I know nothing of the contract of purchase.

384 Cross-examination:

Int. 1. I only know this hay was grown on the place, cut on the place, stacked and put in the barn on the place, and that it was put up by Mr. Shropshire. I was at the place a great many times and put up hay on the shares for both Lyle and Shropshire. This hay was cut and put up by Shropshire before Lyle took possession.

Int. 2. I know the hogs were raised on the place; knew them from pigs up, and besides Lyle told me he bought them of Shropshire.

Int. 3. The means I have of knowing the business relations of these parties is just what both Lyle and Shropshire told me. I had often talked with Shropshire and Lyle about the change there and Lyle told all about what he paid for the place.

Int. 4. It is not true that what I have testified to in this case was learned from Loretta Shropshire, her husband, her attorneys or friends. I never talked much with Loretta about it. I talked a great deal with both Shropshire and Lyle about it. Shropshire always claimed that the lien on the place was on account of a security debt for his benefit. 385

Int. 5. I do not know that I can give the date and day when John Lyle took the place. It was the same spring I delivered the corn.

Int. 6. I have answered only from my own knowledge.

Int. 7. I have not talked with anybody with reference to this case, except that Col. Ryan told me that he wanted to take my deposition.

Int. 8. I have not talked to any one at all with reference to my testimony in this case.

Int. 9. I was there every day in the spring while they were feeding the hogs. I rented part of the place that year, first of Shropshire and afterwards Lyle closed the bargain; the agreement regarding rent of place was made at my place between me and Mr. Shropshire and Mr. Lyle. In regard to the exact date when I delivered the corn, I know it was in the spring and I now rather believe it was four years ago last spring, instead of three as above stated; at all events, it was the same spring that Lyle took possession of the place, whether three or four years ago.

386 *Testimony of D. Ryan, Taken July 25th,* 1885.

Int. 1. D. Ryan; age, 45 years; residence, Newton, Jasper Co., Iowa; I am attorney-at-law.

Int. 2. I am acquainted with the parties to this suit.

Int. 3. I have in my possession two returned drafts of money sent Mr. Lyle by Ryan Bros.—one dated June 24, 1880, drawn on the Commercial bank, Chicago, for $147.98, and one on same bank, July 10th, 1880, for $132.90. These are the amounts named by me in my former deposition, less exchange. I hand the original drafts, made payable to John Lyle and endorsed by him, to the notary, to be attached to my answer to this interrogatory. (Said drafts handed to the notary, marked Exhibits "A" and "B," and made a part hereof.)

Int. 4. In my former deposition I stated that Mr. Ladd was here at Newton with Mr. Lyle when the negotiations were had between Mrs. Shropshire and Mr. Lyle for a loan of money. I should have said Mr. Blish instead of Mr. Ladd, and I supposed that I had so stated until after my deposition was on file.

387 Cross-examination:

Int. 1. We sent drafts to John Lyle for money collected for services of Shropshire's horses (stallions).

Int. 2. We did not receipt for any money. The stallion books were placed in our hands, and we made collections and entered upon our books of account the collections as made. In addition to the drafts there was an order, but by whom I do not know, to pay W. H. Runnell $61.25, which we paid.

Int. 3. Loretta Shropshire, the complainant in this case, is indebted to me or those I represent by reason of her failure to account as administratrix of her husband's estate.

Int. 4. I was one of complainant's bondsmen on the bond given by her as administratrix of her first husband's estate.

Exhibit "A" attached to the deposition of David Ryan is a draft of Lufkin and Wilson on the Commercial National Bank of Chicago for $147.98, dated June 24th, 1880, and payable to John Lyle, and endorsed in blank by John Lyle.

Exhibit "B" attached to said deposition is a draft drawn
388 by Lufkin and Wilson on Commercial National Bank of
Chicago, payable to the order of John Lyle, dated July 10th,
1880, for $132.90, indorsed in blank by John Lyle.

389 EXHIBIT A.

Albert Lufkin. James Wilson.

Jasper County bank; established in 1869. Lufkin & Wilson.

[U. S. int. rev. stamp, two, 2, cents.]

(Map of the State of Iowa.)

$147\frac{98}{100}$. NEWTON, IOWA, *June* 24, 1880.

Pay to the order of John Lyle one hundred & forty-seven $\frac{98}{100}$ dollars.

(Signed) LUFKIN & WILSON.

To the Commercial National bank, Chicago, Ills.

No. 8312.

(Endorsed :) (S'g'd) John Lyle. Pay to the order of Jas. De Koven, cas., for collection on acc't of First National bank, Kewanee, Ill. Pay through Chicago clearing-house. Jul- 2, 1880. One hundred & forty-seven $\frac{98}{100}$ dollars.

390 EXHIBIT B.

Albert Lufkin. James Wilson.

Jasper County bank; established in 1869. Lufkin & Wilson.

[U. S. inter. rev. stamp, two, 2, cents.]

(Map of the State of Iowa.)

\$132$\frac{90}{100}$. NEWTON, IOWA, *July* 10, 1880.

Pay to the order of John Lyle one hundred & thirty-two $\frac{90}{100}$ dollars.

(S'g'd) LUFKIN & WILSON.

To the Commercial National bank, Chicago, Ills.

No. 8377. Commercial Nat'l bank. Paid Jul- 16, 1880.

(Endorsed :) (S'g'd) John Lyle. Pay to the order of Jas. De Koven, cas., for collection on acc't of First National bank, Kewanee, Ill. (S'g'd) —— ——. Pay through Chicago clearing-house. Jul- 16, 1880. To the Merchants' National bank. One hundred & thirty-two & $\frac{90}{100}$ dollars.

391 *Testimony of Mrs. A. V. Dalrymple, Taken Aug. 1st, 1885.*

Int. 1. Mrs. A. V. Dalrymple; age, 52; reside at Monroe, Jasper Co., Iowa; wife of A. S. Dalrymple, hotel-keeper.

Int. 2. I am acquainted with Loretta and A. C. Shropshire.

Int. 3. I know that some years ago at our house, in the office, Mr. Shropshire paid Mr. Lyle some money; I do not know how much.

Int. 4. I saw the money paid, but I could not tell how much it was.

Int. 5. I only answer as above.

Int. 6. I know nothing further.

Cross-examination :

Int. 1. When the money was paid I was behind the counter in the office, and they were in the office four or five feet from me.

Int. 2. I haven't stated any details.

Int. 3. How many bills were there—1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, or how many?

Ans. I answered the above.

Int. 4. I don't know the size of the bills.

Int. 5. I have stated none of the conversation.

392 Int. 6. I don't remember any of the conversation; in fact, I hardly remember anything about it; it was no affair of mine. I have enough to do to attend to my own affairs.

Int. 7. I have talked with no one about this case but Mr. Shropshire.

Int. 8. I have talked with no one about my evidence in this case.

393 *Testimony of George W. Harlan, Taken July 24th*, 1885.

Int. 1. Geo. W. Harlan; age, 40 years; residence, Jasper county, Iowa; clerk of the circuit and district courts.

Int. 2. Acquainted with both parties to this suit.

Int. 3. April 15th, 1885, there was filed in the office of the clerk of the circuit court, Iowa, deposition of John Lyle, taken on the 10th day of April, 1882, in a case then pending in said court wherein Alexander Rhinehart was plaintiff and R. Johnson *et al.* defendants.

Int. 4. The deposition of John Lyle that was filed April 15th, 1882, was taken April 10th, 1882, and the seventh interrogatory and the answer thereto is as set out in the copy hereto attached marked Exhibit "A" and made a part of this my deposition.

(Copy handed the notary, marked Exhibit "A," and attached hereto.)

Int. 5. I hand to the notary a just and true copy of interrogatory No. 9 and the answer thereto to be attached to this my deposition.

(Copy handed the notary, marked Exhibit "B," and made a part of said witness'*es* testimony.)

394 Int. 6. I do not know any other matters.

Cross-examination:

Int. 1. Said deposition contains ten interrogatories-in-chief and thirteen cross-interrogatories.

Int. 2. The questions are all answered.

Int. 3. There are five pages of said deposition.

Exhibit "A" attached to deposition.

Int. 7. If you or either of you have in your possission any letter or letters written by A. Rhinehart or L. Shropshire or the agent of either of them or any other person containing a proposition made from either of them to John Lyle for a loan from said John Lyle to L. Shropshire with a view to a settlement between Mrs. L. Shropshire, A. Rhinehart, and other parties in 1877, please attach said letters to your deposition.

Ans. I did receive two or more letters from Ryan Bros. in 1878, who, as it appeared from the letters, were acting as agents for the plaintiff, containing a proposition for a loan of money with a view of settlement between Loretta Shropshire, the plaintiff, and other parties.

395 Exhibit "B."

Int. 9. If you cannot produce such letters please attach copies of the same, if in your possession, or state the contents as nearly as possible.

Ans. I cannot attach copies of them, as I did not preserve them. The substance of the first proposition, as I remember it, was that I should pay a judgment in the U. S. court for some $1,700.00, for which plaintiff was surety, and the balance bid on the land by John Rhinehart above the judgment for which it was sold, amounting to over $1,000, and some taxes and costs amounting to three or four hundred dollars more; that plaintiff would pay Mrs. Shropshire some $1,000 he owed for cattle or turn over the cattle at the price he bid for them. I think he also wanted the use of one-half of the place, some 250 acres, for one year, or $750.00 in money to be paid to the plaintiff. That proposition I did not accept. The second proposition was that I should pay some $4,250 to Ryan Bros., to be applied in payment of $750, some $1,000 to John Rhinehart, and the judgment in the U. S. court above referred to, and some other
judgments. I cannot remember—there was some matters
396 mentioned in that letter I cannot recall. When this was
paid, John Rheinhart was to quitclaim his interest in the land he had bid off, and I think the last letter said that Ryan Bros. already had the deed in their hands. This proposition I accepted and the money was sent to Smith & Wilson, of Newton, Iowa, to arrange the matter.

397 *Deposition of Philip Carper, Taken July 23d,* 1885.

Int. 1. Philip Carper; age, 22 years; reside in Jasper county, Iowa; occupation, carpenter.

Int. 2. I am acquainted with Mrs. Loretta Shropshire and A. C. Shropshire.

Int. 3. I was at the fair grounds in Des Moines, Iowa, in September, 1879, and saw Mr. John Lyle and Mr. A. C. Shropshire in a stall together, and I saw Mr. A. C. Shropshire pay Mr. John Lyle quite a sum of money. I could not say how much.

Int. 4. I don't remember any of the conversation.

Int. 5. I know nothing else.

Cross-examination:

Int. 1. What interest have you in the matter that you can remember so simple a matter for six years?

Ans. I have no interest at all. The way I come to be at the stall and see them was this: I had or was with Mr. Wright, who had stock in the stall next to Mr. Shropshire's, and they, Mr. John Lyle and A. C. Shropshire, were in the stall when the money was paid—
where we kept our feed—and when I went in for feed they
398 were in the way, and while I was waiting for them to get out
of the road I saw the money pass.

Int. 2. I was in the same stall within two or three feet of the parties when the money was paid.

Int. 5. I haven't talked with anybody with reference to my testimony. I talked with Mr. Wright about the subject, and did not know that I was to be a witness in this case until summoned to give my testimony by the notary.

399 *Testimony of Edward Wright, Taken July 23d,* 1885.

Int. 1. Edward Wright; age, 23 years; reside in Jasper county, Iowa; a farmer.

Int. 2. I know Mrs. Loretta Shropshire, A. C. Shropshire, and John Lyle.

Int. 3. I was at the fair grounds in Des Moines, Iowa, in September, 1879, and in a stall Mr. Shropshire paid Lyle $400. Mr. Shropshire asked him if that was right, and Mr. Lyle counted it and said, Yes; there is just $400. Mr. Lyle says you must take out $35.00 of what he borrowed of Joe Long.

Int. 4. There was something said about timothy seed, but I do not now remember just what it was.

Int. 5. I know nothing further, only that Phillip Carper was in the stall at the time the money was paid. He was getting oats for my horses.

Cross-examination:

Int. 1. I have no interest whatever in this suit. The way I came to remember it this was my stall.

400 Int. 2. I was about three feet from the parties when the money was paid.

Int. 3. I have stated all I remember. I do not know that I heard all the conversation. I would generally notice the payment of that amount of money.

Int. 4. I have talked with no one with reference to my testimony in this case.

401 *Testimony of S. H. Wright, Taken July 23rd,* 1885.

Int. 1. S. H. Wright; age, 67 years; residence, Jasper county, Iowa; occupation, stock-owner and farmer.

Int. 2. I know both parties to this suit.

Int. 3. Do you know of A. C. Shropshire in company with Mr. Lyle in the spring of 1879? If so, state how you know it and what you know.

Ans. Shropshire and Lyle were both here and stayed overnight with us for the purpose of buying heifers. They went around among the neighbors and bought of Mr. Sam. Boyd three heifers. They bought two heifers from me. I drove mine down to the Long place and Mr. Boyd drove his. They were in this neighborhood about two days. When I got to the Long place Mr. Lyle pointed out fifteen or twenty head of heifers they had bought.

Int. 4. I know only as above answered anything of Mr. Lyle taking any cattle to the farm of Loretta Shropshire in 1879 to have them kept.

Int. 5. I have answered about all I know.

402 Cross-examination:

Int. 1. I know whose cattle they were simply because I knew that I sold them myself to Mr. Lyle, and he gave me a statement of what he wanted.

Int. 2. I do not know that I have any knowledge of the dates of the transfer.

Int. 3. With whom have you talked with reference to your testimony in this case?

Ans. I have had a little conversation with both Mr. and Mrs. Shropshire. I haven't seen Mr. Lyle for three or four years. I would state, further, that Mr. Lyle told me that the corn-grinder with which he seeks to charge Mrs. Shropshire was worn out by his neighbors in Illinois.

403 *Deposition of A. C. Shropshire, Taken Aug. 21st, 1885.*

Int. 1. I paid Lyle $400.00 in Des Moines, Iowa, in the fair grounds, in the presence of Mr. Ed. Wright and Mr. Carper. I paid him the $400 and told him it was the proceeds of the timothy-seed money off the farm and it was to be applied upon my wife's account. This was paid September, 1879.

Int. 2. I paid Mr. Lyle $300 at Mrs. Dalrymple's hotel, in Monroe, the same year, on the 20th of March, 1879. Mrs. Dalrymple was in the room. She saw the money paid. I do not know whether she understood the conversation or knew the exact amount of the money, and it was to be applied on my wife's account that she owed him for borrowed money. That was for hay sold off the farm of my wife.

Int. 3. I sold a black mare and her stallion colt to John Lyle, and they were thoroughbred running stock. I sold them to Lyle April 20, 1878.

Int. 4. Mr. John Lyle sold to me individually the stallions Black Eagle, Orange Boy, and Bourbon, and they are the same horses referred to in John Lyle's deposition in this case.

404 Int. 5. Mr. Lyle sold the cattle he says amounted to $1,420 to me individually. My wife knew nothing of the prices or what stock I bought, and she had nothing to do with them, either. It was in 1878. My wife had no interest of any kind in this stock.

Int. 6. I did have a settlement with Mr. Lyle, near Thanksgiving day, in 1877. I did not at that time owe John Lyle one cent on my own account, but was surety for my brother, Gus. Shropshire, in the sum of $1,000, which I paid him in W. H. Cole's office, at Kewanee, Ill. Dr. Cole made the settlement between us, and there was nothing else to settle at that time, and I never owed him anything until I bought this stock of him after that.

Int. 7. State whether or not you and Mr. Lyle, with your wife and Mr. Ladd, had a settlement at your home at the time when any writing was placed on the back of a certain lease referred to by Mr. Ladd and Lyle in their testimony in this case, at which any figuring was done. State all the facts in relation to such alleged settlement.

Ans. There was no settlement at all, and no figures was
405 made at that time. I was afraid that my wife's bondsmen would attach the property that was accumulating on the farm with which we intended to pay Mr. Lyle, and I got Mr. Lyle to come out here and bring Mr. Ladd with him, and Mr. Ladd drew the lease up in my home at that time and dated it back, and all was done with the purpose of securing Mr. Lyle.

Int. 8. The statement of Will Lyle in his deposition that I sold him a black mare is not true. He had nothing with which to purchase the mare. He had married against his grandfather's will and I knew that his grandfather would not advance the money to buy her for Will. John Lyle bought the mare himself and the mare and colt was to have been credited on my wife's account. My wife was to be credited for $300 for the mare and $500 for the stallion colt. These were the ones that Will claims to have bought. I sold Mr. Lyle 62 head of stock hogs, which he denies purchasing in his deposition, and 8 brood sows and 8 tons of hay, and Mr. George Wilson was present and was renting part of the farm and
406 knows it to be true; and Lyle also denies in his deposition breeding mares to my horse Black Eagle. He had left the mares in my charge and I was ordered by John Lyle to breed the mares and I did so. There were four mares bred and each mare *folded* a colt by Black Eagle as the result of such breeding. As to the cattle he denies my buying for him and feeding for ten days. I know such is true, and that Mr. S. H. Wright sold part of the stock to me for him, and was at my place and seen the stock there of Lyles.

Int. 9. After Mr. Lyle came to your place in October, 1880, was there any conversation had between him and Mrs. Shropshire as to what the price was at which he would take the land; if so, what was said? State fully.

Ans. Lyle came out in the latter part of 1880 and talked the matter over with Mrs. Shropshire, my wife, and the agreed price was $42.50 per acre—what we *he* had been offered before.

Int. 10. George Lyle claims to have bought the farm in controversy. I know that he never bought it and never had any-
407 thing to buy it with. He only had such means as John Lyle, his grandfather, gave him. Mr. John Lyle — to me frequently about the boys, and he said he never would give the boys anything as long as they lived with the wives they then had. Mr. Lyle requested me frequently to talk to the boys about their disagreeable marriages. Will Lyle came to my house and stayed there until his wife followed him there. He came in the latter part of January, 1880, and stayed until late in the spring, when his wife came, and then he run off to Kentucky.

Cross-examination:

Int. 1. I owe John Lyle individually for the cattle and horses I bought of him, and then $1,000 as suretys on the Gus. Shropshire's note.

Int. 3. I sold John Lyle the mare and stallion colt myself.

Int. 4. This is the second time I have testified in this case.

Int. 5. It is not true that my wife has lost all the property which came to her from her first husband, if she can get what Lyle owes her.

Int. 6. I should judge that she received from her first hus-
408 band's estate somewhere about $50,000 in property and money
together.

Int. 7. Ryan Bros. were Mrs. Shropshire's attorneys in the settlement of her first husband's estate.

Int. 8. It is not true that John Lyle has paid out for me and my wife nearly $30,000. He never paid anything for me, and he only loaned my wife $4,250, and then raised the mortgage of $10,000 at German savings bank, at Davenport, Iowa.

Int. 9. I have never said that John Lyle was the best friend I had. I never considered him any better friend than any other usurer from whom we borrowed money and paid interest at the rate of ten per cent.

Int. 10. I spoke to John Lyle when I met him after the commencement of this suit; that is all.

Int. 11. I never asked John Lyle to loan me any money without offering security for it. We talked of a loan after this suit was begun, and he said he would loan it if the suit could be settled, and I told him that was my wife's matter and she would not settle it
without her money. That ended the conversation. He had
409 sent for me to try to make a settlement at that time, and I
told him I could not settle the matter between him and my
wife.

Int. 12. I never asked C. K. Ladd to intercede for me and procure a further loan from Lyle for me. I talked to Lyle himself, for I knew that Ladd was an enemy of mine at the time.

Int. 13. I have answered all the questions-in-chief from what I know to be the facts in the case.

Int. 14. Will you please state how the business was carried on? After you married your present wife did she own all the property or did you?

Ans. She owned all the property she had when we were married and all she bought afterwards, and when her stock was sold she took the notes in her own name.

Int. 15. The cattle and horses I bought I bought for myself and the proceeds I used for my own individual purposes, and what property was sold of hers was used for her sole benefit. I state further that Lyle claims in his deposition that he loaned me $500 when I
was first married, in the fall of 1876. I never borrowed that
410 $500 of Lyle. I got it of W. H. Cole, and I went to Kewanee
a month or three weeks afterwards, and went to Dr. Cole's
office to pay the money back to Dr. Cole. Cole told me then to pay it to Uncle Johnny Lyle, and for me to pay it to him, as he was then in the office. I did not up to that time (know?) that Cole got the money of Lyle, but I paid it to Lyle in Cole's under his, Cole's, order. I further state that Lyle in his deposition denies having re-

ceived $1,950, and says that he only received $1,750 I gave him at the time. I gave the note on Poole & Fuller of $1,750, $200 cash in my house, at that time. He was on his way to Nebraska and wanted some money to pay taxes with, and I gave him the $200 at that time for that purpose. Lyle states that he went to Kentucky for me and my wife on business. I was in Kentucky at that time sick, and knew nothing of his coming until he was there. My wife came with him, and for no other purpose only to nurse me while I was sick. Lyle told me after he got there that he came to Kentucky to see Gus. Shropshire, who owed 411 him $1,000 at the time, for which I was surety, and he wanted to see if Gus. Shropshire would let him have some stock on that claim of $1,000, and after that he bought a fine stallion and a pair of mules from other parties for himself and got me to ship them to Kewanee, Illinois, for him, which I did under his direction, and I paid $110 for the shipment of this stock to him, which he denies. Lyle also states that I wanted him to purchase some stock in Kentucky, which is false. Lyle denies getting me to go to Ft. Dodge to see Mr. Coffin. Coffin owed Lyle about $4,000 in notes, which Lyle purchased of me. Lyle extended the time of payment one year. In the meantime Coffin became insolvent and Lyle sent me up there to use my influence to get his claim settled and was to pay all my expenses. Lyle denies having had my horses and buggy or to drive and purchase stock. The truth is as I stated in my former deposition. Will Lyle says that he worked for his board at my house. This is not true. He was there attending to his grandfather's business and he never worked for me, for I had nothing for him to do. Mr. Lyle also left 412 George Washington there to work for him and I boarded both him and Will Lyle according to his directions, and I further state that the one thousand bushels of corn that Lyle claims I fed was not delivered on the place while I was there, but was delivered after I left, as is shown by the deposition of Geo. Wilson filed herein.

413 *Continuation of Rebutting Testimony.*

LORETTA SHROPSHIRE }
vs. }
JOHN LYLE. }

414 *Continuation of Rebutting Testimony.*

LORETTA SHROPSHIRE }
vs. }
JOHN LYLE. }

Deposition of William H. Cole, Taken Aug. 25, 1885.

Int. 1. William H. Cole; age, forty-eight years; physician; residence, Keewanee, Illinois; am acquainted with all the parties to this suit.

Int. 2. I was present about Thanksgiving day in Keewanee, Illinois, when a settlement was made between John Lyle and A. C. Shropshire in the year 1877. Lyle and Shropshire settled everything that there was between them at that time. I cannot specify the various items.

Int. 3. I did all the figuring for them while they were settling, and that is how I know they settled up everything between them, and I know it by their talk at that time. I do not know anything about A. C. Shropshire being security on a note for his brother Gus.
until the next year after this settlement. I preserved the
415 figures I then made for some time, but I cannot now tell
where they are.

Int. 4. I do not know, of my own knowledge, of John Lyle getting a black mare from Mrs. Loretta Shropshire in 1878, nor do I know who was the owner of the mare. I have heard John Lyle and A. C. Shropshire speak of her as having come from Kentucky, but as to who owned her or sent her I do not know.

Int. 5. As to John Lyle getting a black stallion colt one year old, the foal of the mare above named, I can only answer as I have in relation to the mare.

Int. 6. I do not know of what stock the mare and colt were, but they were pedigreed stock, as I heard Shropshire give Mr. Lyle the pedigrees, and I think I wrote it down for him. I know they were considered well-bred animals by Lyle and Shropshire both.

Int. 7. I only know by hearsay of Mrs. Shropshire shipping any stock, mules, and horses from Kentucky to John Lyle in the spring of 1879.

Int. 8. I know that Mr. Lyle let A. C. Shropshire have cattle in
1878 to the amount of over $1,420. They were turned over
416 to me and shipped in my name. Mrs. Shropshire had no
interest in them so far as I know.

Int. 8. I do not think Mrs. Shropshire knew anything about it until they got to Iowa.

Int. 9. The stallion "Bourbon" was shipped to Iowa at the same time the cattle above spoken of were shipped. I am not certain about the price agreed upon, but my recollection is that it was about $400. I paid the expenses of shipping them all to Iowa.

Int. 11. I do not know anything about John Lyle selling a stallion in 1879 called sometimes "Orange Boy" and sometimes "Star of the West," except hearsay.

Int. 12. Were any cattle sold by Mr. Lyle at the same time he *he* sold these stallions or either of them? If so, to whom?

Ans. I do not know of my own knowledge.

Int. 13. Mrs. L. Shropshire had nothing that I know of to do with the said sale and purchase of said horses and cattle.

Int. 14. I do not know that John Lyle owned a stallion called *by* "Black Eagle," and he never claimed to me to own him.

Int. 15. I know that Mr. Lyle let Mr. A. C. Shropshire
417 have $500 at the time he shipped stock from here to Ottumwa, Iowa, before he was married, and it was repaid in
my office, with interest, at the time they settled up their accounts

in 1877. I remember this because I know that Shropshire was displeased at the charge of interest on the loan for so short a time.

Int. 16. I do not know of John Lyle selling anything to Mrs. Shropshire, and I have stated all that I know about it in my former answer.

Int. 17. At the time the stallion Bourbon was sent out and the cattle in my name I was simply acting as trustee for A. C. Shropshire and, to a certain extent, for Mr. Lyle also, and all the interest I had in them was reconveyed to Mr. Lyle in the spring of 1879.

Int. 18. I do not now think of anything that may be of advantage to either party.

Cross-examination:

Int. 1. The settlement referred to in the second interrogatory was not in writing.

Int. 2. I do not remember anybody who was present at the settlement but Mr. Lyle, Mr. Shropshire, and myself; others were 418 in and out, but I do not know that they took any part in or paid any attention to the settlement. They were several days getting in items and matters between them.

Int. 3. I do not know who the mare belonged to referred to in the 4th interrogatory.

Int. 4. Loretta Shropshire and A. C. Shropshire lived together on the farm in Jasper county, excepting that A. C. Shropshire spent the winter of 1877–1878 in Kentucky.

Int. 5. I have not sworn who owned one animal and who another.

Int. 6. I know just this much about who owned the stock on said farm: I was there when she and Shropshire were married and saw a considerable amount of stock on the farm at that time. I also know that A. C. Shropshire afterward shipped cattle and horses from here on to the farm that belonged to him. I could have distinguished Shropshire's stock from hers at that time. I know that the mare and colt mentioned in the fourth and fifth interrogatories did not belong to the stock that Shropshire shipped from here.

Int. 7. I have testified in my former deposition as to what money I know of having been sent to Mrs. Shropshire or for 419 her benefit, and that is all I know anything about. As to the exact amount of money or how many thousand dollars he has let her have I do not know.

Int. 8. I am not qualified to pass an opinion as to whether John Lyle has been very generous with the Shropshires, as I know very little of their dealings since 1879.

Int. 9. I will leave the matter as to whether they are bankrupt and are trying to bleed Mr. Lyle to be determined by the court.

Int. 10. I have testified once before in this case.

Int. 11. I am not particularly unfriendly to John Lyle, but there is not that intimate relation between us that there once was when we were doing business with one another.

Int. 12. I have stated all the answers to the interrogatories propounded to me from memory, excepting that I have referred to my books to refresh myself as to some of the dates.

Int. 13. Do you swear that you know the exact relations of John Lyle and A. C. Shropshire and Loretta Shropshire to the animals referred to in the examination-in-chief?

Ans. I will rest the matter on my examination-in-chief.

420 Int. 14. I do not know how much money A. C. Shropshire was worth when he married his present wife.

Int. 15. It is not a fact that he was bankrupt. He had some property, but I do not know the amount.

Int. 16. I resided at Kewanee, Illinois, between the years 1877 and 1881.

421 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE
vs.
JOHN LYLE.

Abstract of Additional Testimony.

Deposition of John Lyle. Filed May 21, 1886. Taken by defendant.

Int. 1. My name is John Lyle; age, seventy-nine; residence, Kewanee, Illinois; occupation, retired farmer.

Int. 2. State the facts with reference to the item of the two thousand dollars in your account set out in the answer to the amendment to plaintiffs' bill of complaint, and if you have any evidence of said indebtedness attach the same to your deposition or a copy thereof.

Ans. Alex. Shropshire and W. H. Cole were figuring together to run the place in Iowa and have me furnish the money and Cole to be the party known in the transaction; that deal was private,
422 and when I found out what was their plan I refused to do it;
then Cole wanted to get out and turned over this note to me for money that I had already let Shropshire have before. I will attach a copy of the note.

Int. 3. The negotiations were with both of the Shropshires with reference to the purchase of the farm, but the letters were written mainly by A. C. Shropshire. Mrs. Shropshire, however, requested me to let him have certain things, horses, etc.

Int. 4. A. C. Shropshire owed me considerable money at that time and the agreement with him was that it should be figured in with the purchase price of the place.

Int. 5. The last charge for sundry items in my account is composed of some small items that were mentioned in my other deposition and some that were omitted. I went to Kentucky three times and they agreed to pay me for my time and expenses, but did not pay me anything. I paid Mrs. Shropshire's expenses down there and paid expenses going and coming from here to Iowa repeatedly and let him and her have small sums of money from time to time

that I had no account of. I think the whole of those items
423 would amount to more than a thousand dollars. I don't
know of anything else except that note mentioned in my second answer, a copy of which I have here appended:

"$2,000. NEWTON, IOWA, *April* 25, 1878.

"Two years after date I promise to pay to the order of W. H. Cole two thousand dollars at Newton, Iowa, with ten per cent. interest after date, value received, with ten per cent. attorneys' fees if collected by suit, and hereby consent that any justice of the peace shall have jurisdiction of this note.

"LORETTA SHROPSHIRE AND
"A. C. SHROPSHIRE."

Endorsed: "W. H. Cole."

Cross-examination:

Int. 1. My deposition has been before taken and filed in this case.

Int. 2. I supposed I had in my former deposition specifically and particularly enumerated the claims which I insisted I had against the plaintiffs, unless it may be this $2,000.00 note, and I thought that was in.

Int. 3. I supposed I did in my former deposition make reference to this note of two thousand dollars, and if I did not it
424 was an oversight.

Int. 4. I supposed the note was in, and if it was omitted I do not know why.

Int. 5. I came into possession of the note now in controversy a good while before I gave my former deposition. I cannot tell exactly the time, but it was a good while before I bought the place; it was signed over the time Shropshire got the bay and sorrell stallions and some cattle. I can't tell the exact date.

Int. 6. I do not know and did not know at the time that the note was endorsed by W. H. Cole and delivered to me; that it was absolutely without consideration between Loretta and A. C. Shropshire and W. H. Cole. They kept their business from me and I did not know anything about it.

Int. 7. I did not pay W. H. Cole anything for the transfer of the note in question to me, but I paid Shropshire full value.

Int. 8. It is not true that I never paid W. H. Cole nor any one else one cent for the note.

Int. 9. It is not true that I omitted to mention the note in my former deposition for the reason I knew that it was without consideration and that I had paid nothing for it and had no interest in it, if it was omitted.

425 Int. 10. I did not know that the note in question was executed by plaintiffs to W. H. Cole wholly without consideration and was secured by chattel mortgage solely because the plaintiffs were laboring under financial embarrassment, and to shield the mortgaged property from their creditors. I did not know anything about their transactions at all.

Int. 11. I think I have stated all the circumstances in connection with the execution and endorsement of said note. Cole endorsed it to me when he delivered it.

426 *Deposition of A. C. & Loretta Shropshire. Filed Sept.* 23, 1886.

Int. 1. My name is A. C. Shropshire; age, fifty; I reside in Newton, Jasper county, Iowa; occupation, a breeder of horses.

Int. 2. I am one of the parties to this suit.

Int. 3. Mrs. Loretta Shropshire and I executed a note to W. H. Cole in April, 1878.

Int. 4. The amount was two thousand dollars.

Int. 5. W. H. Cole lived at Kewanee, Illinois, and lives there now.

Int. 6. There was nothing given to Mrs. Loretta Shropshire or myself as a consideration for this note.

Int. 7. We never executed any other note to W. H. Cole.

Int. —. There was a chattel mortgage given at the time this note was given.

Int. 9 & 10. I haven't the original chattel mortgage, but I can give a copy of it and hand to the notary a copy thereof and attach it to my answer and ask that it be made a part thereof.

Int. 11. This mortgage was recorded in Jasper county, Iowa, on the 25th day of April, 1878.

Int. 12. There was never any effort made by W. H. Cole or John
Lyle to take possession of any of the mortgaged property
427 by virtue of this instrument.

Int. 13. This note that I now speak of is the same note that John Lyle now sets up and claims upon in the suit now pending against Lorretta Shropshire and myself in the United States circuit court.

Int. 14. I was present when the note and mortgage were made to Cole.

Int. 15. John Lyle knew as to whether there was any consideration for the note and mortgage and was present at the time they were given.

Int. 16. My wife had borrowed four thousand two hundred and fifty dollars from Lyle, the defendant, and gave him a deed to the farm to secure him for this money. Lyle and Cole and myself talked this matter over, and we made this chattel mortgage and executed the two-thousand-dollar note to W. H. Cole in trust to keep off other creditors, to enable us to pay Lyle what we owed him, and Lyle knew at the time this note and mortgage was given for that purpose, and Lyle became dissatisfied at Cole holding this mortgage and note when he had loaned us money; that he thought he could
hold the mortgage just as well as Cole.

428 Int. 17. John Lyle and W. H. Cole were very warm friends
at the time this note was given.

Int. 18. W. H. Cole did all the business between Lyle and us at the time.

Int. 19. They were not friendly at the time. Lyle objected to Cole holding the note and mortgage.

Int. 20. I nor my wife have not at any time received any consideration or anything of value from John Lyle for this note.

Int. 21. My wife was involved and in debt to a considerable amount when this note and mortgage were executed to Cole. Lyle knew all about it.

Int. 24. At the time this note and mortgage were executed to Cole Lyle was present and said it would be all right.

Int. 25. Lyle advised us to do it in that way, so as to enable us to pay him what we owed him—to keep off the other creditors so that we could pay him.

Int. 26. There was never any agreement or talk since that time between Mr. Lyle and myself and wife that this note should stand as and for an evidence of debt that we were owing Lyle.

Int. 29. There was never any agreement that any debt I owed
John Lyle should be figured in as any part of the purchase
429 price of the land involved in this suit.

Int. 30. I do not owe John Lyle anything.

Int. 31. I had no authority whatever from my wife to agree with John Lyle that anything that might be due and owing her should be placed upon anything that I might have owed him at any time.

Cross-examination:

Int. 1 & 2. I am the husband of Loretta Shropshire; was married in the fall of 1876.

Int. 4. I think it was in the spring of 1878 that the mortgage to Mr. Lyle for four thousand two hundred and fifty dollars was given.

Int. 5. A quitclaim deed for a farm of two hundred and fifty acres, known as the Glenn farm, was given to Mr. Lyle to secure him for this debt.

Int. 6. The farm was worth about sixty dollars per acre.

Int. 7 & 8. We never made a note and mortgage to John Lyle. My wife and myself made a note and mortgage to one W. H. Cole by the advice of John Lyle, to keep off other creditors to enable us to pay John Lyle what we owed him.

Int. 9. Lyle became somewhat offended at W. H. Cole and
430 came to my house and told me that he was not satisfied with
W. H. Cole holding that chattel mortgage, and why couldn't he hold it as well as Cole; that he had furnished us four thousand two hundred and fifty dollars. We then agreed to go with him to Kewanee, Illinois; get Cole to turn the note and mortgage over to him to hold in trust and to keep off other creditors to enable us to pay off what my wife had borrowed of him, viz., four thousand two hundred and fifty dollars.

Int. 10 & 11. I did not personally owe Mr. Lyle anything at that time. I was only surety on a note for my brother at that time. I owed him then one thousand dollars as surety for my brother.

Int. 12 & 13. Prior to that time I sold Lyle stock and bought some from him, and before I came to this country I was never indebted to Lyle except the one thousand dollars security debt. Before that time I had been security for my other brother to John Lyle, but had paid it all up.

Int. 14. Mr. Lyle never paid Mr. Cole anything for the two-thousand-dollar note and mortgage.

431 Int. 15. Neither one of us ever bought any stock of W. H. Cole.

Int. 16. We never received any stock from Mr. Cole or Lyle at the time the mortgage was given for anything of that kind nor prior thereto.

Int. 17. Neither Mr. Lyle nor Mr. Cole ever furnished me or my wife any stock to be placed upon the Glenn farm, and Mr. Cole never had any stock there when we took this mortgage, and Lyle advised us to let Cole have the mortgage to keep of- other creditors.

Int. 18 & 19. Cole took the mortgage in order to enable us to pay Lyle what we owed him. Cole was only acting as a friend of both of us, and held the property in that way.

Int. 20. I have placed the value of the farm at sixty dollars per acre, which would make something over thirty thousand dollars.

Int. 21. Mr. Lyle did not ask for any additional security. He got mad at Cole, and did not want Cole to hold the mortgage and me owing him money. I got Cole to turn this over to him so that I could pay him what I owed.

Int. 22. You refer now to what you owed him personally on your brother's account?

432 Ans. It was for what my wife owed him that I was speaking about. Lyle is a man of very strong prejudices, and after he got mad at Cole he did not want Cole to hold the mortgage, and that he would hold it himself for me. Cole held the property for our benefit and to secure Lyle for what my wife owed him.

Int. 24. There was no consideration whatever for the note and mortgage.

Redirect examination:

Int. 1 & 2. Cole held the property for our benefit to enable us to make the money off of this property and pay Lyle. It was not given as security for money borrowed, but to keep off other creditors.

433 Know all men by these presents that I, Loretta Shropshire, of the county of Jasper and State of Iowa, in consideration of the sum of two thousand dollars to me in hand paid by W. H. Cole, of Kewanee, Henry Co., Ills., party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do grant and convey unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels, to wit: Fifty-four shoats, one yoke of bulls, one cow, light red, Miss Sterling 2nd; four bedsteads, beds, and bedding, including four feather beds, two springs and two mattrasses, three Brussel*l*s carpets, all three-ply carpets, three hall carpets, and one stair carpet with rods, all my silverware of every description, all ornamental shells, one movable dish cupboard, one extension table, one sideboard, 70 pieces chinaware, 3 heating stoves, one book-case, one what-not, one hat-rack, two setts parlor chairs, consisting of two easy chairs, 1 rocker, and 8 chairs, 3 damask tête-à-tête, 1 Brussel*l*s lounge, 1 damask

lounge, two marble-top center tables, one standing mirror & footing, ten lace curtains, ten lambrequins, and all other personal
434 property now owned by me on the Glenn farm, except such as is exempt from execution under the statutes of Iowa:

To have and to hold the same forever; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said Loretta Shropshire shall pay to the said W. H. Cole, his heirs, assigns, &c., her certain promissory note, dated and described as follows, to wit, and one for two thousand dollars, payable April 25th, 1880, with interest at the rate of 10 per cent. per annum, according to the tenor thereof, then these presents to be void; otherwise in full force; and I, the said Loretta Shropshire, do hereby covenant and agree to and with the said W. H. Cole that in case of default made in the payment of the above-mentioned promissory note or in case of my attempting to dispose of or remove from said county of Jasper the aforesaid goods and chattels or any part thereof, or whenever the said mortgagee shall cho-se to do so, then and in that case it shall be lawful for the said mortgagee or his assigns, by himself or
435 agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with all reasonable costs and attorney's fees pertaining to the *the* taking, keeping, advertising, and selling of said property. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part.

Said sale to take place — Glen farm, in the county of Jasper and State of Iowa, after giving at least ten days' notice thereof by posting up written notices in three public places in said county; and I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all the proceedings connected herewith and convey absolutely all my right and title therein.

Witness my hand this 25th day of April, A. D. 1878.

(Signed) LORETTA SHROPSHIRE.

436 STATE OF IOWA,
Jasper County, } *ss:*

Be it remembered that on the 25th day of April, 1878, before the undersigned, W. G. Work, a notary public in and for said county, personally appeared Loretta Shropshire, to me personally known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be her voluntary act and deed.

Witness my hand and notarial seal the day and year above written.

W. G. WORK,
[SEAL.] *Notary Public.*

For and in consideration of the sum of two thousand dollars to me paid I do hereby assign all my right, title, and interest in and to the within mortgage to John Lyle.

Dated May 14, 1879.

(Signed) W. H. COLE.

(Endorsed:) Chattel*l* mortgage. Loretta Shropshire to W. H. Cole. State of Iowa, Jasper county. Filed for record the 25th day of April, A. D. 187–, at 3 o'clock p. m., and recorded in Book 100, Ch. Mtg., on page 61. W. Carrothers, recorder. —— ——, deputy. Fees, 75 cents, paid.

437 *Deposition of Loretta Shropshire.*

Int. 1 & 2. My name is Loretta Shropshire; age, forty-seven; residence, Newton, Iowa, and am one of the parties to this suit.

Ints. 3 & 4. My husband and myself did at one time execute a note to W. H. Cole for two thousand dollars. We never executed any other note to him.

Int. 4 & 5. It was in the year 1878, I think, and is the same note that John Lyle claims upon this suit.

Int. 6. There was a mortgage executed to W. H. Cole about the same time, but I do not have it under my control.

Int. 8. The description of the property included in Exhibit A, which is attached to my husband's deposition, is the description of the property included in the mortgage given to Cole to secure the note I speak of.

Int. 9 & 10. We received nothing at all from Mr. Cole for the note. The note and mortgage were given as a blind to keep off other creditors and to enable us to pay Lyle first what we owed him. Lyle knew it was done as a blind. He advised us to do it.

438 Int. 12. I never at any time had any conversation with John Lyle in which there was any agreement, written or oral, as to this note being taken by him as a part payment of any debt that my husband and I might be owing Lyle.

Int. 13 & 14. I have never had any agreement with Mr. Lyle with reference to this note by which it should be valid for any purpose. I have never authorized any person to use this note for any purpose with reference to the debts of my husband.

Int. 15. I have no knowledge of my husband making any agreement with John Lyle to use this note in connection with any debt that my husband owed Lyle, either as payment or collateral security, or in any way to assume the payment or aid in the payment of my husband's debts.

Cross-examination:

Int. 1. My husband never did make any arrangement through any order from me. I can't say what he did in my absence.

Int. 2. I don't know whether my husband was indebted to Lyle about that time.

Int. 3. I do not know that Mr. Lyle and my husband had extensive dealings prior to that time. I only know where I am or was personally interested.

439 Int. 4. I mean to say that the note and mortgage were wholly without consideration.

Int. 5. I executed no other papers as a blind to Mr. Cole that I can think of now. All that were given were for the benefit of Mr. Lyle.

Int. 6. I took no receipt or acknowledgment from Mr. Cole and Mr. Lyle for my protection showing that the note and mortgage were without consideration.

Int. 7 & 8. I have never had any dealings with any other parties. I never gave mortgages and notes in large sums without consideration other than those referred to in my direct examination.

Int. 9. It was understood by all the parties concerned that the note and mortgage were made to enable us to keep off other creditors to pay Lyle.

Int. 10 & 11. I owed him two thousand four hundred and fifty dollars. It was well secured to Mr. Lyle.

Int. 12. Mr. Lyle was not present when the two-thousand-dollar note and mortgage were made.

Int. 13. Mr. Lyle paid Mr. Cole nothing at all for that note and mortgage; not one cent.

Int. 14 & 15. I was not present when the transfer was made from Cole to Lyle. I think I was not in the same State. I think 440 it was made over at Kewanee.

Int. 16. If I remember right, I think it was Lyle and Cole and myself that was present at the time the note and mortgage were made.

Int. 17. I don't remember whether the papers were made at Ryan's office or Major Smith's.

Int. 18. I have never made any demand or taken any legal steps to prevent the transfer of the note and mortgage or secure the possession of them, because they never had any value in them.

Redirect:

Int. 1. This note was made in Newton.

Int. 2 & 3. I do not know as any papers were given as a blind to Mr. Lyle. I don't remember now whether I mentioned a lease in answering Mr. Clark when he propounded cross-interrogatory 5.

Int. 4. There was, in fact, a lease executed to Mr. Lyle as a blind or for the purpose of keeping creditors off.

Int. 5 & 6. I expect I have spoken of a lease in answering Mr. Clark's questions. That is the same lease that I now refer to.

Recross:

Int. 1 & 2. That lease covered the land or property that Mr. Lyle is now holding, and is the lease referred to in my former deposition.

441 *Deposition of William H. Cole. Filed Sept.* 26, 1886.

Int. 1. My name is W. H. Cole; age, forty-nine; residence, Kewanee, Illinois; occupation, physician.

Int. 2. As far as my memory serves me Mrs. Shropshire executed to me a note for two thousand dollars. The note was said to be secured by chattel mortgage, but I never saw the mortgage. I don't think that Alexander Shropshire's name was on the note, but it may have been. The note was made some time in the spring of 1878, I think.

Int. 3 & 4. There was no consideration paid by me. When the chattel mortgage was executed no other paper or instrument was executed that I remember of.

Int. 5 & 6 & 7. No satisfaction or release of the mortgage was made by me. I turned it over to Lyle and Shropshire at Ladd's office, in Kewanee, at Shropshire's request, and Lyle gave me a release of all liability on the note. There was no release of the mortgage made by me. There is no such paper as a release that I have ever seen.

Int. 9. John Lyle paid me nothing for the two-thousand-dollar note and I paid no consideration for it in the first instance.

442 Int. 10. Mrs. Shropshire told me she had given her brother a note for two thousand dollars and a chattel mortgage on her personal property to keep it from being sold out on a judgment. She wanted to transfer it to me, as Lyle, Shropshire, and myself were intending to handle the property, and the note was made and the chattel mortgage said to have been made, as I have before stated. Lyle knew about the talk in Iowa, and it was talked over here in Illinois at the time the note was turned over to him that there was no consideration for the note when it was made and that there was never any expected. It was turned over to him to hold just as I held it.

Int. 10. When I transferred the note to Lyle I required a release from him on the note because I had to endorse the note to him and I did not want it coming up against me in the future. That was the final act, so far as I was concerned, in the transactions between Lyle and Mrs. Shropshire.

No cross-examination but questions propounded by the clerk.

443 *Deposition of John Lyle, Taken by Plaintiffs. Filed Sept.* 23, 1886.

Int. 1 & 2. My name is John Lyle; age, eighty; residence, Kewanee, Illinois; am defendant in this action.

Int. 3 & 4. I conveyed the premises in controversy in this action to one George Lyle, my grandson.

Int. 5. I cannot tell exactly his age when the deed was made, but George will be twenty-nine this present month. He was farming at the time the deed was made, and has been ever since.

Int. 6. The contract for the sale of the premises in controversy in this action was made in Kewanee, Illinois. No one was present but my wife and him. The contract was not in writing. I cannot give the date, but know that George was over twenty-one at that time.

Int. 7. I do not know the exact amount of his means. He was on a farm in Union county, Iowa, half a section, and had considerable stock and several thousand dollars in notes. He had before worked on the railroad, and I don't know how much he saved there. He got nine or ten hundred dollars from his father's and mother's
444 estate, which I handled till after he came of age. I gave him this half section in Union county, Iowa, in full settlement of all that I held.

Int. 8. This half section in Union county, Iowa, was part of the consideration and was to be deeded as I might direct. He also turned over to me about four thousand dollars' worth of sale notes for stock and other things that he had sold and gave me his note for six thousand dollars. This note he has since paid.

Int. 9. George Lyle did pay me in part for the lands in controversy by land in Union county. The deed was made Sept. 20, 1883, to Esther Lyle, my wife, by my request. The deed conveys the southeast quarter of section sixteen and the northeast quarter of section twenty-one north, range twenty-nine west, of the fifth principal meridian. There was no agreed price by the acre, but the place was to be eight thousand dollars. The deed was not made at the time of the trade, as I didn't know who I might sell it to. I afterwards sold it to a man by the name of Wright and had George deed to my wife and she made the contract with Wright. I attach a copy of the deed to this deposition.

445 Int. 10 & 11. I have not had any assistance from any one in preparing my answers to these interrogatories. I have not received any letters or suggestions from any one.

Int. 12. I do not know of anything else.

No cross-examination but the interrogatories by the clerk.

Exhibit A, attached to A. C. Shropshire's deposition, is a chattel mortgage to W. H. Cole to secure a note for two thousand dollars, dated April 25, 1878, executed to Loretta Shropshire, upon fifty-four shoats, one yoke of bulls, one cow, four bedsteads, beds, and bedding, including four feather beds, two springs, and two mattrasses, three Brussels carpets, three hall carpets, one hall carpet, all her silverware, all ornamental shells, one movable dark cupboard, one extension table, one sideboard, seventy pieces of chinaware, one book-case, one what-not, one hat-rack, two parlor chairs, one Brussels lounge, one damask lounge, two marble-top tables, one standing mirror, two lace curtains, two lambriquins, and all other personal prop-
446 erty owned by her on the said Glenn farm except such as is exempt from execution.

The deed attached to the deposition of John Lyle is dated September 20, 1883, and executed by George W. Lyle to Esther D. Lyle and conveys the land mentioned by John Lyle in his deposition—one-half section—for the consideration of eight thousand dollars.

447 *Warranty Deed.*

This indenture witnesseth that the grantors, George W. Lyle and Mary E. Lyle, his wife, of the —, in the county of Jasper and State of Iowa, for and in consideration of eight thousand dollars in hand paid, convey and warrant to Esther D. Lyle, of the town of Kewanee, county of Henry and State of Illinois, the following-described real estate, to wit: The southeast quarter of section number sixteen (16), in Sand Creek township, Union county, in the State of Iowa; also the northeast quarter of section number twenty-one (21), in the said Sand Creek township, Union county, in the State of Iowa, said Sand Creek township being township number seventy-one (71) north, range number twenty-nine (29) west, of the fifth (5th) principal meridian, situated in the county of Union, in the State of Iowa, hereby releasing and waiving all right under and by virtue of the homestead exemption laws of this State.

Dated this twentieth day of September, A. D. 1883.

GEO. W. LYLE. [SEAL.]
MARY E. LYLE. [SEAL.]

Witness:
—— ——.

448 STATE OF IOWA,
County of Jasper, } *ss:*

I, M. P. Doud, clerk of the dist. court in and for said county, in the State aforesaid, do hereby certify that Geo. W. Lyle and Mary E. Lyle, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and dist. court seal this 12th day of October, A. D. 1883.

[SEAL.] M. P. DOUD,
Clerk of Dist. Court.

(Endorsed:) Warranty deed. Geo. Lyle and wife to Esther D. Lyle. Transferred Jan. 21, '84. M. Miller, auditor.

STATE OF IOWA,
Union County, } *ss:*

No. —.

This instrument was filed for record in the recorder's office of said Union county on the 21 day of January, A. D. 1884, at 8 o'clock a. m., and recorded in Book 29 of Deeds, page 118.

J. H. CRAWFORD, *Recorder.*

449 I hereby certify that the within is a correct copy of the deed mentioned by John Lyle in his answer to the 9th interrogatory.

(Signed) JAS. K. BLISH,
Commissioner.

450 And on the 19th day of June, 1889, a stipulation as to transcript for the U. S. Supreme Court was filed in said cause, the original of which is hereto attached and herewith returned in the words and figures following, to wit:

451 In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

LORETTA SHROPSHIRE & A. C. SHROPSHIRE, Plaintiffs,
vs.
JOHN LYLE, Defendant.
} Stipulation.

It is hereby stipulated by and between the parties to this suit that the clerk of said court shall certify to the Supreme Court of the United States a copy of the abstract of evidence upon which said cause was tried in the said United States circuit court, together with the exhibits attached thereto and to the depositions on file in said cause. Said clerk shall also attach to said record three papers introduced in evidence described as follows: A lease from John Lyle to Loretta and A. C. Shropshire, dated March 1st, 1879; Exhibit 7 attached to deposition of John Lyle, and Exhibit F attached to the deposition of Loretta Shropshire, and that said clerk shall also certify up to said Supreme Court a transcript of the pleadings, papers, and record entries contained in the list or statement appended hereto, and that upon said evidence and such certified transcript and papers this cause shall be submitted to the Supreme Court of the United States.

The pleadings, papers, and record entries referred to, with their dates of filing, are as follows:

452 Transcript from Jasper Co. dist. court	Oct.	16th, 1883.
Answer	Dec.	20th, 1884.
Replication	Jan.	5th, 1885.
Motion to dismiss for non-joinder	Oct.	21st, 1885.
Record entry	Nov.	13th, 1885.
Record entry	Nov.	14th, 1885.
Record entry	Jan.	5th, 1886.
Amendment to bill	Jan.	15th, 1886.
Answer to amendment to bill	March	1st, 1886.
Replication	March	15th, 1886.
Record entry	May	13th, 1886.
Demurrer to bill	May	14th, 1886.
Record entry	May	18th, 1886.

Record entry	May	21st, 1886.
2nd amendment to bill	May	27th, 1886.
Answer to 2nd amendment to bill	July	10th, 1886.
Replication	July	10th, 1886.
Interlocutory decree	Nov.	11th, 1886.
Master's report	Dec.	14th, 1886.
Motion to confirm report	Dec.	20th, 1886.
Defendant's exception to master's report	Jan.	12th, 1887.
Order submitting cause and for entry of decree	May	28th, 1887.
Opinion of court	June	29th, 1887.
Final decree	May	28th, 1887.
Defendant's application as to appeal bond	Aug.	28th, 1887.
Petition for appeal and order allowing	Oct.	2nd, 1888.
Appeal bond	Oct.	2nd, 1888.
Original citation	Oct.	2nd, 1888.

The foregoing is the entire record in said case upon which the same was tried in the circuit court of the United States aforesaid.

453 In witness whereof we have hereunto subscribed our names.

WILLIAM PHILLIPS,
JAMES G. DAY,
Solicitors for Complainants.
C. C. COLE,
A. H. McVEY,
J. S. CLARK,
Solicitors for the Defendant.

[Endorsed:] Loretta Shropshire *et al. vs.* John Lyle. Stipulation as to transcript for the U. S. Supreme Court. Filed Jun- 19, 1889. Ed. R. Mason, clerk.

454 United States Circuit Court, Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries as named and set forth in the original stipulation of the parties filed and returned herewith, including copies of the abstract of evidence and copies of exhibits referred to in the said abstract of evidence and also referred to in said original stipulation in a certain cause adjudicated in said court wherein Loretta Shropshire and A. C. Shropshire were complainants and John Lyle was defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix

Seal U. S. Circuit Court,
Southern District
Iowa.

the seal of said court, at office, in the city of Des Moines, in the said district, this twentieth day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

E. R. MASON,
Clerk United States Circuit Court, Southern District of Iowa.

Endorsed on cover: Case No. 13,581. S. Iowa C. C. U. S. No. 378. John Fisher & William Lyle, executors, and Hester Lyle, sole devisee of John Lyle, deceased, appellants, *vs.* Loretta Shropshire and A. C. Shropshire. Filed July 12, 1889.

Office Supreme Court U. S.
FILED.
JAN 20 1890
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1889.

JOHN FISHER, and
WILLIAM LYLE, Executors of the the estate of, and Hester Lyle sole devisee of, John Lyle, deceased,
Appellants,

VERSUS

LORETTA SHROPSHIRE, and
A. C. SHROPSHIRE, *Appellees.*

No. 1174

APPEAL

FROM THE

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF IOWA,

CENTRAL DIVISION.

MOTION TO DISMISS

APPAEL, NOTICE,

RECORD AND BRIEF.

C. C. COLE, A. H. McVEY and J. S. CLARK,
Solicitors for Appellants.

WILLIAM PHILLIPS and JAMES G. DAY,
Solicitors for Appellees.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1889.

JOHN FISHER, and WILLIAM LYLE, Executors of the the estate of, and Hester Lyle sole devisee of, John Lyle, deceased, *Appellants*, VERSUS LORETTA SHROPSHIRE, and A. C. SHROPSHIRE, *Appellees*.	No. 1174

APPEAL

FROM THE

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF IOWA,

CENTRAL DIVISION.

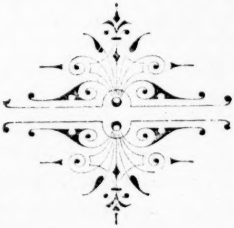
MOTION TO DISMISS

APPAEL, NOTICE,

RECORD AND BRIEF.

C. C. COLE, A. H. McVEY and J. S. CLARK,
Solicitors for Appellants.

WILLIAM PHILLIPS and JAMES G. DAY,
Solicitors for Appellees.



NOTICE OF MOTION TO DISSMISS APPEAL.

——IN THE——

SUPREME COURT OF THE UNITED STATES,

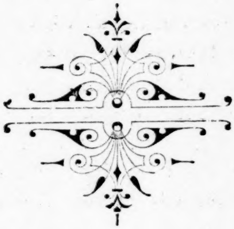
October Term, 1889.

JOHN FISHER, and
WILLIAM LYLE, Executors of the Estate of, and Hester Lyle, sole devisee of, John Lyle, deceased,
Appellants,
vs.
LORETTA SHROPSHIRE, and
A. C. SHROPSHIRE, *Appellees.*
No. 1174

To John Fisher and William Lyle, Executors of the Estate of John Lyle, deceased, and Hester Lyle, sole devisee of John Lyle, deceased, Appellants; and to C. C. Cole, A. H. McVey and J. S. Clark, their solicitors.

You are hereby notified that the above named appellees will, on or before the 10th day of February, A. D. 1890, cause to be filed with the Supreme Court of the United States, the accompanying motion to dismiss the appeal in the above entitled cause, together with the attached printed portion of the record in said cause, and brief, and that said motion will be submitted in said Supreme Court, on the 24th day of February, A. D. 1890, or as soon thereafter as the attention of the Court can be had thereto.

WILLIAM PHILLIPS, and
JAMES G. DAY
Solicitors for Complainants and Appellees.



MOTION TO DISMISS APPEAL.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1889.

JOHN FISHER, and WILLIAM LYLE, Executors of the Estate of, and Hester Lyle, sole devisee of, John Lyle, deceeased, *Appellants.* *vs.* LORETTA SHROPSHIRE, and A. C. SHROPSHIRE, *Appellees.*	No. 1174.

The complainants and appellees in the above entitled cause, by William Phillips and James G. Day, their solicitors, appearing specially for this motion, now move the Court to dismiss the Appeal herein at the costs of the appellants, for the want of jurisdiction of this court, because the transcript of the record was not filed in this Court, and the cause was not docketed during the term next after the time at which the appeal was prayed and allowed. And as more specific grounds of said motion, the Appellees show to the Court the following facts, apparent by the record in said cause and the records of this Court.

1. The appeal was allowed, and the citation was tested on the 6th day of August, 1888.

2. The petition for appeal, allowance of appeal and citation were filed in the office of the Clerk of the Circuit Court, in which the decree appealed from was rendered, October 2nd, 1888, and the appellees were cited to to appear in this Court on the 8th day of October, 1888.

3. The October term, 1888, of this Court, which was the term next after the time at which the appeal in this cause was prayed and allowed and the citation was issued, and to which the appeal was returnable, ended on the 13th day of May, 1889, when this Court adjourned finally for the term.

4. The transcript in this cause was filed, and the cause was docketed in this Court, on the 12th day of July, 1889, long after

the appeal had become *functus officio*, and of no avail, by the adjournment of the term to which the appeal was taken.

WILLIAM PHILLIPS, and
JAMES G. DAY,
Solicitors for Complainants and Appelles.

(The originals of the foregoing notice and motion are on file in the Clerk's office.)

COPY OF RECORD.

The appellants not having printed the record in this cause, the appellees herewith submit to the Court such printed portions of the record as are necessary to an understanding of the points presented in the motion.

On the 2nd day of October, 1888, there was filed in the office of the Clerk of the Circuit Court in which the decree was rendered, an allowance of appeal in this cause, as follows:

"In the District Court of the United States, Southern District of Iowa, Central Division.

In the Eighth Circuit.

Loretta Shropshire & A. C. Shropshire,
vs. Complainants, } Order of Appeal.
John Lyle Defendant.

On this 6th day of August, 1888, comes now John Lyle, by Cole, McVey & Clark, his attorneys, and presents to me, a Judge of said Court, his appeal to the Supreme Court of The United States, from the decrees and proceedings entered and had herein, and specially from the final decree entered in said cause, on the 29th day of June, 1887, and all orders and proceedings in said cause. Thereupon it is ordered that the appeal be allowed to said petitioner, from said final decree, orders and proceedings, and that the appeal bond be fixed at $1500.

Aug. 6th, 1888. J. M. LOVE, Judge."

See transcript, page 163.

On the same day there was filed in said Court a citation, which had theretofore been served upon complainants, and their solicitors, as follows:

"In the Circuit Court of The United States, Southern District of Iowa, Central Division, in the Eighth Circuit.

Loretta Shropshire & A. C. Shropshire, Complainants,
vs.
John Lyle, Defendant.
} Citation.

The Hon. J. M. Love, one of the Judges of the Circuit Court of the United States, in and for the Southern District of Iowa, to Loretta and A. C. Shropshire:

Whereas John Lyle has lately appealed to the Supreme Court of the United States from the decree lately rendered by the Circuit Court of the United States for the Southern District of Iowa, Central Division, made in favor of you, the said Loretta Shropshire and A. C. Shropshire, and has filed the security as required by law. You are, therefore, and hereby cited to appear before the said Supreme Court, at the City of Washington, on the 8th day of October, 1888, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the City of Des Moines, in the Southern District of Iowa, Eighth Circuit, this 6th day of August, in the year of our Lord one thousand, eight hundred and eighty-eight.

Aug. 6th, 1888. J. M. Love, Judge."

See transcript, page 178.

BRIEF.

This Court has held by a current of decisions, uniform with but one exception, and covering a period of more than ninety years, that, unless the transcript upon an appeal be filed in the office of the Clerk during the term which follows the taking of the appeal, the appeal becomes *functus officio*, and will, either upon motion of the adverse party, or upon suggestion of the Court itself, when the fact is discovered, be dismissed.

For the mere convenience of the Court, we cite the following authorities:

Hamilton vs. Moore, 3 D. 371;
Blair vs. Miller, 4 D. 21;
Steamer Virginia vs. West, 19 How. 182;
Mesa vs. The United States, 2 Black 721;
Castro vs. The United States, 3 Wall. 46;
German vs. United States, 5 Wall 825;
Edmondson vs. Bloomshire, 7 Wall. 306;
The Lucy, 8 Wall. 307;
Grigsby vs Purcell, 99 U. S. 505;
The Tornado, 109 U. S. 110;
State vs Demarest, 110 U. S. 400;
Killian vs. Clark, 111 U. S. 784;
Radford vs. Folsom, 123 U. S. 725;
Fayalle vs. Texas R. R. Co., 124 U. S. 519;
Chicago vs. Evanston R. R. Co., 129 U. S.;
Credit Co. vs. Railway Co., 9 Sup. Ct. Rep. 107;
Hill vs. R. R. Co., 9 Sup. Ct. Rep. 269;
Richardson vs. Green, 9 Sup. Ct. Rep. 443.

It clearly appears from the record in this case that the appeal was not docketed, nor was the transcript filed in this court, until long after the adjournment of the term, which followed the taking of the appeal. It follows that the appeal has not been brought to this court within the time by statute and the decisions of this court required, and that the appeal should be dismissed.

Respectfully Submitted,

Wm Phillips

James C Day

Solicitors for Complainants and Appellees.

Office Supreme Court U. S.
FILED,
FEB 24 1890
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1174.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF IOWA—CENTRAL DIVISION.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS OF THE
ESTATE OF, AND HESTER LYLE, SOLE DEVISEE OF,
JOHN LYLE, DECEASED, *Appellants*,

VS.

LORETTA SHROPSHIRE, AND A. C. SHROPSHIRE,
Appellees.

Resistance of Motion to Dismiss Appeal.

RECORD AND BRIEF.

C. C. COLE, A. H. McVEY & J. S. CLARK, FOR APPELLANTS.
WILLIAM PHILLIPS & JAMES G. DAY, FOR APPELLEES.

P. C. KENYON, LAW BRIEF PUBLISHER, DES MOINES.

upon motion of the adverse party, or upon suggestion of the Court itself, when the fact is discovered, be dismissed.

For the mere convenience of the Court, we cite the following authorities :

Hamilton vs. Moore, 3 D. 371 ;
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The Lucy, 8 Wall. 307;
Grigsby vs Purcell, 99 U. S .505;
The Tornado, 109 U. S. 110;
State vs Demarest, 110 U. S. 400;
Killian vs. Clark, 111 U. S. 784;
Radford vs. Folsom, 123 U. S. 725;
Fayalle vs. Texas R. R. Co., 124 U. S. 519;
Chicago vs.Evanston R. R. Co., 129 U. S.;
Credit Co. vs. Railway Co., 9 Sup. Ct. Rep. 107:
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It clearly appears from the record in this case that the appeal was not docketed, nor was the transcript filed in this court, until long after the adjournment of the term, which followed the taking of the appeal. It follows that the appeal has not been brought to this court within the time by statute and the decisions of this court required, and that the appeal should be dismissed.

Respectfully Submitted.

Wm Phillips

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES,
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JOHN FISHER and WILLIAM LYLE, Executors of the
Estate of, and HESTER LYLE, Sole Devisee of,
JOHN LYLE, Deceased, *Appellants*,

vs.

LORETTA SHROPSHIRE, and A. C. SHROPSHIRE,
Appellees.

Resistance of Motion to Dismiss Appeal.

RECORD AND BRIEF.

C. C. COLE, A. H. McVEY & J. S. CLARK, For Appellants.
WILLIAM PHILLIPS & JAMES G. DAY, For Appellees.

P. C. KENYON, LAW BRIEF PUBLISHER, DES MOINES.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS OF THE ESTATE OF, AND HESTER LYLE, SOLE DEVISEE OF, JOHN LYLE, DECEASED, *Appellants*, *versus* LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, *Appellees*.	No. 1174.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES.
SOUTHERN DISTRICT OF IOWA—CENTRAL DIVISION.

C. C. COLE, A. H. MCVEY & J. S. CLARK, *Solicitors for Appellants.*
WILLIAM PHILLIPS AND JAMES G. DAY, *Solicitors for Appellees.*

RESISTANCE OF MOTION TO DISMISS APPEAL.

The appellants resist the motion of appellees to dismiss this appeal and ask the attention of the court to the following showing:

STATEMENT OF FACTS.

Final decree entered June 29, 1887.

The allowance of the appeal citation and bond were filed October 2, 1888.

The transcript was ordered October 2, 1888.

Transcript was paid for in December, 1888, before its completion.

The solicitors for both parties, on June 17, 1889, made a written stipulation to submit the case on an agreed transcript, attached to which stipulation was the transcript.

The transcript was sent to clerk of supreme court, June 29, 1889.

Transcript filed and cause docketed in clerk's office July 12, 1889.

Deposit of cash required by clerk sent him July 26, 1889.

Counsel for appellees entered their appearance generally July, 1889.

Stipulation for substitution of parties, appellant, was signed by counsel for both parties November 9, 1889, and filed with clerk of this court.

Counsel for appellees moved this court for substitution of parties, which motion was sustained, December, 1889.

Counsel for appellees move to dismiss the appeal, January 1890.

LACHES EXCUSED.

The appellees have waived the filing of the transcript at the next term to which the appeal was taken as required by the rules of this court, by entering into a written stipulation after said term, specifying what the transcript should contain, and whereby it was agreed by both parties that the case should be submitted upon the transcript thereby agreed to.

This court has frequently recognized an exception to the rule that an appeal will be dismissed if the transcript is not filed at the next term after the appeal, and that the failure to so file, may be excused or waived by a proper showing or where "a recognized satisfactory excuse for the *laches* is made."

See—

Richardson vs. Greene, 130 U. S., 111.

United States vs. Gomez, 3 Wall., 752.
United States vs. Vigil, 10 Wall., 423.
Grigsby vs. Purcell, 99 U. S., 505.
Edwards vs. United States, 102 U. S., 575.

The failure to file the transcript at the next term is not jurisdictional, because in a proper case such failure may be excused and the motion to dismiss be denied.

In the case of *Grigsby vs. Purcell*, 99 U. S., 507, it is said, "The real objection is not that this court has no jurisdiction, but "that the plaintiff in error, or the appellant, as the case may be, "has failed to duly prosecute his suit.

And in *Richardson vs. Greene*, 130 U. S., 111, it is said that this court will not entertain an appeal when the transcript is not filed at the succeeding term, etc., "unless a recognized satisfactory excuse for the *laches* is made."

The question which arises then in this connection is, do the facts in the case present a satisfactory excuse for the *laches* or failure to file the transcript in time? It will be seen on reference to the facts, that the allowance of the appeal, citation and bond, were filed in the circuit court, October 2, 1888. In pursuance of an oral agreement, the clerk immediately went to work to prepare an agreed transcript, which was completed by the clerk early in June, 1889.

On the 17th of June, 1889, the parties entered into a written stipulation for the submission of the case upon the agreed transcript. This was within two years after the rendition of the decree and was made in good faith, and was a declaration in writing that upon such record the case should be submitted and tried. The material portions of which stipulation is as follows (the whole being printed at length hereinafter):

> It is hereby stipulated by and between the parties to this suit that the clerk of said court shall certify to the supreme court of the United States, a copy of the abstract of evidence upon which said cause was tried in the said United States circuit court, together with the exhibits

attached thereto, and to the depositions on file in said cause. Said clerk shall also attach to said record three papers introduced in evidence, described as follows: A lease from John Lyle to Loretta and A. C. Shropshire dated March 1, 1879; exhibit "7" attached to deposition of John Lyle, and exhibit "F" attached to the deposition of Loretta Shropshire. And that said clerk shall also certify up to said supreme court a transcript of the pleadings, papers and record entries contained in the list or statement appended hereto and that upon said evidence and such certified transcript and papers this cause shall be submitted to the supreme court of the United States.

Filed June 19, 1889.

It will be seen from this agreement in writing that it was the intention of both parties to eliminate from the record all unnecessary parts and submit the cause upon such agreed transcript, and, as this agreement was signed after the return term had adjourned, it was a waiver in fact, of the filing of the transcript at the next term, after the appeal was taken. Counsel for the appellees knew that the term had adjourned and they deliberately entered into this agreement, to submit this case upon this agreed transcript, and signed the same. This agreement was filed on the 19th day of June 1889, and the appellants, at great expense, caused said transcript to be returned to this court and filed with the clerk, and the cause to be docketed in due order, on July 12, 1889. Counsel for appellee then entered appearance generally in said cause, and it was held in the case of *United States vs. Armejo*, 131 U. S., 82 Apendix, that a general appearance having been once entered cannot be changed to a special appearance. The point we make is that by the decisions of this court the failure to file said transcript did not oust this court of jurisdiction, but that such failure may be excused in a proper case is a well recognized exception to the rule, and as the chief justice said in *Grigsby vs. Purcell*, already quoted, that the real objection is not that the court has no jurisdiction, but that the plaintiff in error, or the appellant, as may be, has failed to duly prosecute his suit is the real point sought to be guarded. The failure to prosecute the suit is a detriment to the appellees alone, and not to this court, and if the appellees see fit to waive the failure so to file, then we take it that the appellees cannot claim, truthfully, that there were any *laches* to their detriment, because they agreed, in writing, after the term had expired that the transcript might be filed, and not only so, but that the case should be tried upon that transcript. The court then has jurisdiction, and the only objection to the enforcement of the rule is to prevent delay in the prosecution of the suit, and as counsel for the appellee have agreed that this delay shall not be considered, we submit that it must be true that there was a sufficient excuse shown, or, in the language of this court, "a satisfactory excuse for the *laches* has been made." What more satisfactory excuse could be shown, counsel having agreed that parts of the record should be eliminated and the clerk of the circuit court having in obedience to said agreement completed a transcript, after the return term had adjourned, and thereupon counsel for the appellee solemnly entered into a written agreement, whereby they deliberately stipulated and agreed over their own signature that upon said transcript the cause should be submitted and determined and tried; and it would be trifling with this court, and with the rights of litigants, to now say that these facts do not afford a sufficient excuse for a failure to file the transcript in time. Or to say, which they do in effect, that they did not mean or intend to abide by the solemn agreement to which they had so deliberately subscribed.

We most earnestly insist that counsel cannot enter into a written agreement and make the same a part of the records of this court, and then be heard to say, that, by that agreement, they intended just the opposite; that, while they solemnly said to counsel for appellants, and to this court, that the cause should be tried upon the agreed transcript, that, at the same time, they secretly intended that it should not.

Counsel should be held strictly to their written undertakings filed in this court, and counsel for appell~~ees~~ants are guilty of no *laches* and their delay is excused when they accepted the conditions of the stipulation and strictly complied therewith, and the rules of this court thereafter.

II.

JURISDICTION INVOKED BY APPELLEES.

The appellees' counsel entered their appearance regularly in this case, and upon their motion in open court, after the transcript was filed, they caused to be substituted new parties appellants in this case, thereby admitting the jurisdiction of this court, and if jurisdiction attaches for one purpose, then it attaches for all purposes.

The printed record hereto attached, which also appears in the transcript, shows that counsel for appellee not only entered into a written stipulation to submit the cause upon the transcript filed immediately after such stipulation, entered their general appearance in said cause after the filing of said transcript, but that counsel thereafter entered into a further stipulation for the substitution of parties, appellant, which stipulation is printed at length herein, and in December, 1889, counsel for appellees in open court moved the substitution of parties appellant in this case, and an order was entered therein by this court substituting parties appellant. Counsel thus, after the return term had adjourned, and at the second term after the allowance of the appeal, deliberately and purposely recognized the jurisdiction of this court in the case, by procuring an order for the substitution of parties. This court then had jurisdiction to substitute parties, and parties were substituted on motion of the appellee. We submit that appellees, after this course of conduct, can not now be heard to allege that this court had no jurisdiction in this case; neither can they be heard to allege that counsel for appellants were guilty of *laches*, in failing to sooner file the transcript in this cause. With full knowledge of the time when the transcript was filed; with full knowledge of the time when the appeal was taken, and with full knowledge of the fact that they had entered into a stipulation to submit the case under an agreed transcript, they deliberately invoke the jurisdiction of this court, and obtain an order in a matter pertaining to the rights of litigents in this case, and we therefore say that they can not now be heard to claim that counsel for appellants have been guilty of *laches*, because they recognized that the cause was properly in court, and that a satisfactory excuse for failure to sooner file the transcript was thus admitted by counsel for appellees to be established.

III.

APPELLEES ESTOPPED.

Appellees are estopped to insist that this appeal be dismissed under the rule, by their course of conduct in connection with the record and their appearance herein, and this court should take this conduct as a satisfactory excuse for the failure to file the transcript at the return term.

The facts in this case, we submit, fully warrant us in asking the enforcement of the rule, which should obtain between all men, as well as litigants in court, that when anything is done or said which necessarily tends to mislead or render less vigilant another party, that such person, so misleading, should be estopped from taking any advantage of such act or conduct.

In *Edwards vs. United States*, 102 U. S., 576, this court said:

> It is abundantly shown that the omission to give the bond was through the inadvertance of counsel and without any intention to delay the prosecution of the suit. No harm has been done save possibly a short extension of the time for bringing on the hearing. The defendants in error have delayed their motion to dismiss until a new writ is barred by lapse of time.

And the motion was denied.

In the case at bar all these reasons for denying the motion obtain, that there was no intention to delay the prosecution of the suit is clear, the cause has been docketed and stands for hearing in its order. The appellees have not only agreed the record, but have agreed in writing, that the cause should be tried upon that record, and have delayed this motion to dismiss until the second term after the appeal, and have, under cover of the agreement, waited until a new writ is barred by lapse of time.

We submit that parties to actions in this court should not be permitted to take advantage of their own acts tending to mislead counsel for the appellants. We not only have in the case at bar an agreement in writing to submit the case upon a certain agreed and stipulated record, which was duly signed by counsel for the appellees, and which eliminated a very large mass of testimony of record, but counsel for appellees afterwards permitted the appellants to go to a great expense in procuring the transcript of this record and to file the same, they entered into a large bond to secure the cost. Appellants have made the requisite deposit of cash required by the clerk of this court, and counsel for appellees have, in addition to this, gone on and stipulated for the substitution of parties plaintiff, and have, upon their own motion in this court, procured such substitution to be made, and after all this has been done and the return term has ended, and under cover of all these facts, misleading appellants as to their real intentions, they have delayed their motion to dismiss until a new appeal is barred by the lapse of time, when they came into this court and asked to dismiss the appeal. We submit, by every principle of fair dealing which should govern litigants and their causes, and in view of the obligation they are under to this court, and to each other, appellees should be estopped from insisting upon their motion, and that this court should hold that this is sufficient excuse upon the part of appellants for any apparent *laches*, and that the motion of the appellees should be denied.

But, aside from this estopple, if counsel for appellees intended in good faith to take advantage of the failure to file the transcript in time, they should have proceeded under the rule which gave them the right to docket and dismiss the cause, and having failed to avail themselves of the rule until after the appellant had gone to the expense and trouble of filing his transcript and making the necessary deposits in cash, it was too late for these defendants to make their motion as seems to be held in the case of *Pickett vs. Legenwood*, 7th Peters, 147.

IV.

NO LACHES.

The appellant has been guilty of no fatal laches or delay in reference to this case. The appeal was perfected on the 2d day of October, 1888; a verbal stipulation to agree the transcript was then made between counsel for the respective parties; the appellants ordered the transcript to be made, which was not fully completed until the 17th day of June, 1889, a written stipulation was entered into and made a part of the records of this court, agreeing to submit said cause upon such agreed transcript, which transcript was at once forwarded to the clerk of this court, and filed, the cash deposit made and the cause docketed, a general appearance entered for appellees, the jurisdiction of this court invoked by appellees to substitute parties, and counsel for appellants had the right to believe, and did believe, that the appeal was regular and so treated.

We submit that the facts in this case show that counsel for appellants were in point of fact guilty of no *laches;* they did everything necessary to perfect this appeal. They procured the appeal to be allowed by the circuit judge; gave a bond in the sum of $1,500 and caused a citation to be issued and served; entered into a stipulation with counsel for appellees and agreed the record; gave an order at once to the clerk of the circuit court to prepare the transcript; paid the clerk a large sum of money for said transcript before it was completed; thereafter entered into a written stipulation and agreement to submit said cause upon such agreed transcript, all of which was done as promptly as could be done, taking into account the state of the record and the agreements made in reference thereto, and counsel for appellees, after the term adjourned, entered into this agreement, entered their appearance, invoked the jurisdiction of this court, substituted parties and treated the appeal in all respets as regular, and led the counsel for appellants to believe that they so treated it—in good faith. We submit, in view of these facts, that it cannot properly be said that counsel for appellants were guilty of *laches* in connection with this appeal, and we therefore ask that the motion be denied.

V.

A NEW APPEAL.

The signing of the stipulation, June 17, 1889, within two years after the decree in the case, in connection with the facts of this case, and the general appearance of counsel for appellees thereafter, was in effect a new appeal, or the keeping alive of the old one.

The making of the written stipulation for the submission of this case, together with the general appearance of counsel for the appellees, at the next term thereafter, in this cause, constitutes, in fact, a second appeal. The appeal had already been allowed, which was good. The entering of the general appearance of counsel for appellee at the return term, was a waiver of the citation, as has been frequently held (*Alviso vs. United States*, 5 Wall., 824; *Sage vs. Railroad Co.*, 96 U. S., 712), and the words of the written stipulation constitute, with the transcript attached, a full record, which, when filed in this court, would be a full compliance with the rules of this court. No order allowing an appeal is necessary (*Brandies vs. Cochrane*, 105 U. S., 262). It will be observed that this written stipulation was made and filed within two years after the decree was entered, and the transcript was filed in pursuance thereof before the next term of this court, and was duly docketed, so that by force of this agreement and the facts stated we have all the requisites of an appeal. The entering of an appearance; the filing of the transcript; the docketing of the case, and a deposit with the clerk of the required cash. If it be said that there should be another bond, it is within the power of this court, which has been frequently exercised, to order an additional bond to be filed in this court, *Brown vs. McConnell*, 124 U. S., pages 491 and 492, *Anson vs. R. R.*, 23 How., and appellants offer now to file a second bond if so ordered.

The case of *Goodwin vs. Fox*, 120 U. S., 775, is exactly in point. In that case it was held that a stipulation extended the time for the filing of the appeal bond and the certificate of evidence is equivalent to an order renewing the allowance of an appeal, and the stipulation of the parties was there recognized and enforced. And in the case at bar, the making of this stipulation and the entering of a general appearance thereafter was a waiver of all citation, and the equivalent of an order renewing the allowance of an appeal and especially must this be treated so, as the time for taking a new appeal has since expired and expired before counsel made this motion to dismiss.

And in the case of *Brown vs. McConnell*, 124 U. S., 489, it was held that the signing of a citation returnable to the proper term of this court, but without the acceptance of security, constituted an allowance of an appeal which enables this court to take jurisdiction.

If then the signing of a citation will enable this court to obtain jurisdiction, much more then will the signing of a stipulation, as in the case at bar, and the entry of the general appearance in the case by counsel for the appellee, enable this court to take jurisdiction.

And in the case of *Stewart vs. Masterson*, 124 U. S., 493, it was held that the signing of a citation after the expiration of the term to which an appeal was returnable, and after the commencement of the following term, and without taking new security, is, in effect, the granting of a new appeal, returnable at the next term of court.

So of the case at bar, it may be said that the signing of this stipulation and written agreement, whereby it is provided that the cause shall be submitted and tried upon the annexed transcript and the filing thereafter of the transcript; the docketing of the cause, and the general appearance of counsel at the next term, may, with much greater force, be said to in effect be the granting of a new appeal.

This court has frequently recognized the doctrine which we contend for that even after the return term acts may be done and performed which may amount, in effect, to the granting of a new appeal, and we most earnestly submit in this case that the facts shown by this record constitute in substance and in fact, in equity and good conscience, the allowance of a new appeal, or the keeping alive of the old one.

VI.

In conclusion, we therefore respectfully ask this court to overrule the motion of the appellees and to hear this case upon its merits.

COPY OF RECORD.

The appellants' herewith submit to the court such portions of the record as will enable the court to understand the position taken by counsel in resistance to the motion.

On the 27th day of June, 1889, the parties entered into the following stipulation which was filed January 19, 1889:

Stipulation for Transcript and Appeal.

In the Circuit Court of the United States in and for the Southern District of Iowa—Central Division.

Loretta Shropsrire and A. C. Shropshire, *Plaintiffs*,
vs.
John Lyle, *Defendant*.
Stipulation.

It is hereby stipulated by and between the parties to this suit that the clerk of said court shall certify to the supreme court of the United States, a copy of the abstract of evidence upon which said cause was tried in the said United States circuit court, together with the exhibits attached thereto and to the depositions on file in said cause. Said clerk shall also attach to said record three papers introduced in evidence described as follows:

A lease from John Lyle to Loretta and A. C. Shropshire, dated March 1, 1879; exhibit "7" attached to deposition of John Lyle, and exhibit "F" attached to the deposition of Loretta Shropshire.

And that said clerk shall also certify up to said supreme court a transcript of the pleadings, papers and record entries contained in the list or statement appended hereto and that upon said evidence and such certified transcript and papers, this cause shall be submitted to the supreme court of the United States.

The pleadings, papers and record entries referred to with their dates of filing are as follows to-wit:

Transcript from Jasper county district court	October 16, 1883.
Answer	December 20, 1884.
Replication	January 5, 1885.
Motion to dismiss for non-joinder	October 21, 1885.
Record entry	November 13, 1885.
Record entry	November 14, 1885.
Record entry	January 5, 1886.
Amendment to bill	January 15. 1886.
Answer to amendment to bill	March 1, 1886.
Replication	March 15, 1886.
Record entry	May 13, 1886.
Demurrer to bill	May 14. 1886.
Record entry	May 18, 1886.
Record entry	May 21, 1886.
Second amendment to bill	May 27. 1886.
Answer to second amendment to bill	July 6. 1886.
Replication	July 10, 1886.
Interlocutory decree	November 11, 1886.
Master's report	December 14, 1886.

Motion to confirm report	December 20, 1886.
Defendants' exceptions to master's report	January 12, 1887.
Order submitting cause and for entry of decree	May 28, 1887.
Opinion of court	June 29, 1887.
Final decree	June 29, 1887.
Defendants' application as to appeal bond	August 28, 1887.
Petition for appeal and order allowing	October 2, 1888.
Appeal bond	October 2, 1888.
Original citation	October 2, 1888.

The foregoing is the entire record in said case upon which the same was tried in the circuit court of the United states aforesaid.

In witness whereof we have hereunto subscribed our names.

(Signed), WILLIAM PHILLIPS,
JAMES G. DAY,
Solicitors for Complainants.
C. C. COLE,
A. H. McVEY,
J. S. CLARK,
Solicitors for Defendants.

Endorsed: Loretta Shropshire, *et al.*, *vs.* John Lyle, stipulation as to transcript for the United States supreme court.

Filed June 19, 1889.

ED. R. MASON, *Clerk.*

A true copy.
Attest: ED. R. MASON, *Clerk.*

Original on file in the office of the clerk of the supreme court.

On the 9th day of November, 1889, counsel for appellant and appellee entered into a stipulation to substitute parties appellant.

STIPULATION FOR SUBSTITUTION OF PARTIES.

IN THE SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1889.

JOHN LYLE, *Appellant.*
vs. No. 1174.
LORETTA AND A. C. SHROPSHIRE.

In this case it is hereby stipulated and agreed. that since the failing of the transcript, in the office ef the clerk of the supreme court of the United States, John Lyle, appellant herein, departed this life, testate, and that John Fisher and William Lyle are the executors of his last will and testament, and Hester Lyle is his sole devisee. It is further agreed that John Fisher and William Lyle, executors of the estate of John Lyle, deceased, and Hester Lyle, devisee, shall, upon filing of this stipulation, in the office of the clerk of the supreme court of the United States, be substituted as appellants herein, and that in that name the further proceedings in this cause shall be conducted. And the clerk of the supreme court shall enter the appearance of such executors and devisee of record and make such changes in the title of said cause, and in the record, as shall be necessary to carry out the stipulation.

A. H. McVEY, *Counsel for Appellants*,
WM. PHILLIPS, JAMES G. DAY,
Solicitors for Appellees.

DES MOINES, IOWA, *November 9, 1889*.

Original on file in the office of the clerk of the supreme court.

ORDER OF SUPREME COURT.

On the —— day of December, 1889, the supreme court, on motion of appellees' counsel, made an order for the substitution of John Fisher and William Lyle, executors of John Lyle, as parties appellant.

C. C. Cole
A. H. McVey
J. S. Clark
Solicitors for Appellants.

Office Supreme Court U. S.
FILED,
FEB 24 1890
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1174.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF IOWA – CENTRAL DIVISION.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS OF THE
ESTATE OF, AND HESTER LYLE, SOLE DEVISEE OF,
JOHN LYLE, DECEASED, *Appellants*,

VS.

LORETTA SHROPSHIRE, AND A. C. SHROPSHIRE,
Appellees.

Appellees' Argument in Reply.

C. C. COLE, A. H. McVEY & J. S. CLARK, FOR APPELLANTS.
WILLIAM PHILLIPS & JAMES G. DAY, FOR APPELLEES.

P. C. KENYON, LAW BRIEF PUBLISHER, DES MOINES.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN FISHER AND WILLIAM LYLE,
EXECUTORS OF THE ESTATE OF, AND
HESTER LYLE, SOLE DEVISEE OF,
JOHN LYLE, DECEASED, *Appellants*,
versus
LORETTA SHROPSHIRE AND A. C.
SHROPSHIRE, *Appellees*.

No. 1174.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES.
SOUTHERN DISTRICT OF IOWA—CENTRAL DIVISION.

C. C. COLE, A. H. MCVEY & J. S. CLARK, *Solicitors for Appellants*.
WILLIAM PHILLIPS AND JAMES G. DAY, *Solicitors for Appellees*.

APPELLEES' ARGUMENT IN REPLY.

I.

The circumstances attending the execution of the stipulation respecting what should be certified to this court are set out in the affidavit hereto attached. The only purpose and the only effect of that stipulation are to substitute the abstract of the evidence upon which the cause was tried in the circuit court, and the portion of the record referred to in the stipulation, for the evidence *in extenso*, and the entire record in the case. By no process of just reasoning, nor by any proper construction, can any other or more enlarged effect be given to the stipulation. Even if the parties had expressly agreed that the transcript should be filed in this court, and the case should be heard and determined upon its merits, notwithstanding the failure to file the transcript and docket the case during the term next following the taking of the appeal, such agreement could not be allowed any effect, and would not be entitled to any consideration in this court.

In *Castro vs. United States*, 3 Wall., 46, the appeal was dismissed notwithstanding the fact that the record was filed under an agreement between the attorney of appellant and the district attorney, subject to the approval of the attorney general, after the expiration of the term at which the cause should have been docketed, that the cause should be submitted on printed briefs.

In the *Lucy*, 18 Wall, 307, an appeal was dismissed notwithstanding the fact, as appears on page 308, that "the cause was transferred to the supreme court of the United States by consent of all parties in interest." In this case the court say:

> The fact that no transcript of the record was filed at the next term would be fatal to the appeal. No consent of counsel can give jurisdiction. Appellate jurisdiction depends on the constitution and the acts of congress. When these do not confer it courts of the United States cannot exercise it. We cannot take cognizance of a case not brought before us in conformity with the law.

The stipulation filed in this case, however, falls very far short of an agreement that the cause shall be docketed in the supreme court and determined upon its merits, notwithstanding the failure to docket the case during the term following the taking of the appeal.

The only exceptions which have been allowed, so far as we have discovered, since the case of *Wood vs. Lide*, 4 Cranch., 180, to the requirement that the transcript of the record must be filed during the term which succeeds the taking of the appeal, are *United States vs. Booth*, 21 Howard, 506, and *United States vs. Gomez*, 3 Wall., 752. In the former case the judges of the supreme court of Wisconsin had directed their clerk to make no return to the writ of error, and to enter no order upon the journals or records of the court concerning the same, and the delay in filing the transcript was a consequence of such order. In the latter case the delay was occasioned by an agreement to withhold the transcript until the following term of the court in order to give the appellee an opportunity to move the court to set aside the order of appeal, and by the refusal of the clerk of the district court to furnish a transcript. No such meritorious causes of delay exist in this case. In *Grigsby vs. Purcell*, 99 U. S., 505, which recognizes the exceptions above named, the court, on page 507, say:

> But in all such cases it must appear that the appellant or the plaintiff in error has not himself been guilty of *laches* or want of diligence.

Laches and want of diligence appear clearly to exist in the present case. Although the transcript was practically all prepared and ready for certification as early as December sixth (see affidavit of J. D. Jordan, hereto appended,) no further attention was given it until the 12th day of June, 1889, one month after the October term, 1888, of this court had adjourned, and the cause was not docketed until one month thereafter, to-wit, on the 12th day of July., 1889. Counsel can not successfully maintain that the signing of the stipulation referred to in any manner misled them to their prejudice, or caused them to omit the doing of anything which they would or could otherwise have done, for the time within which the transcript could be filed had elapsed, before stipulation was signed.

When the foregoing was placed in type, February 18, we had been furnished by appellants' counsel with only a brief statement of a portion of the points he intended to discuss. Since then we have been furnished with a type written copy of a more extended discussion of a portion of the points presented. In this portion of his argument, counsel says that the allowance of the appeal, citation and bond were filed in the circuit court October 2, 1888, and in pursuance of an oral agreement, the clerk immediately went to work to prepare an agreed transcript. This statement is in exact accord with the affidavit hereto appended. The implication contained in the remainder of the statement that the clerk worked upon the transcript from the time he commenced to make it out until its completion early in June, 1889, is not in accordance with the facts. The transcript was substantially and almost entirely completed by the 6th day of December, 1888, and early in January, 1889, it was handed to Mr. McVey for his examination. It is evident that, the transcript having thus been prepared and substantially completed, pursuant to an oral agreement that it should contain certain portions of the record entries and an abstract of the evidence, counsel for appellee were placed under a moral and professional obligation to complete the oral agreement by signing the written stipulation, which, although blank as to date, it is conceeded was signed on the 17th day of June, 1889. But what we cannot understand, and what, with all deference for the ingenuity of appellants' counsel, we insist he has not explained, is how the signing of the written stipulation of June 17th excuses the failure of appellants' counsel to file the transcript in this court before its adjournment, which occurred on the 13th day of May preceding. Surely no such retroactive efficiency can be accorded to this stipulation.

Counsel for appellant argues the case throughout as though counsel for appellee had signed a stipulation that the transcript might be filed in this court after the adjournment of the term succeeding the taking of the appeal, or waiving the failure to sooner file the transcript. In fact we did no such thing, and never proposed or intended to do any such thing. Nothing was ever said about the time of filing the transcript. When it is remembered that the transcript was prepared pursuant to an oral agreement entered into long before, for the benefit of appellant, and to save him needless expense, it is evident that the written stipulation had sole reference to what the transcript should contain and not to when it should be filed.

Counsel for appellant says that the facts in this case fully warrant him in asking the enforcement of the rule, that, when anything is done or said which necessarily tends to mislead or render less vigilant another party, that such person so misleading should be estopped from taking any advantage of such act or conduct. We do not know what counsel means by this suggestion. He certainly cannot claim that he was misled or rendered less vigilant by the signing of the stipulation of June 17th. The October Term, 1888, had then been adjourned for more than a month and it was then utterly beyond the power of appellant to comply with the requirement, which demands that a transcript be filed during the term which succeeds the taking of the appeal. Counsel for appellant says that counsel for appellee, after signing the written stipulation, permitted the appellants to go to great expense in procuring the transcript of the record and filing the same. In this statement counsel is hardly ingenuous. The affidavit of J. D. Jordan shows that the transcript was paid for December 6, 1888, more than six months before the stipulation was signed.

Counsel complain that we did not proceed under the rule which gave us a right to docket and dismiss the case. We supposed, inasmuch as we were in no way responsible for the taking of this appeal, that we were under no obligation to docket it and that we could, in all legal and moral fairness, allow the appellant to docket his own appeal. There is nothing in the point that counsel have made the requisite deposit of cash required by the clerk of this court. If he means that he has paid the docket fee, that it was clearly his duty to do. If he means that he has advanced the cost of printing the transcript, if the appeal is dismissed, such cost will not be incurred, and the money advanced will doubtless be returned. Counsel complain that we delayed our motion until it was too late to take a new appeal. But we could not make our motion until after the cause was docketed, which was July 12, 1889, and the time for taking a new appeal had then expired.

Instead of censuring and condemning appellees' counsel for withholding their motion until appellant had docketed his appeal, appellants' counsel should commend and approve them for not waiting until appellant had incurred the large expense of printing the transcript.

Appellants' counsel has asserted and reiterated that appellees' counsel agreed that the cause should be submitted, *and determined and tried* upon the record referred to in the stipulation. Your honors will see, upon examination of the stipulation, that this statement respecting it is greatly exaggerated.

What would become of the rule to which this court has so consistently adhered for more than three quarters of a century, that a case must be docketed during the term following the taking of an appeal, if counsel by a mere agreement respecting what the transcript should contain, made after the adjournment of the term, could require this court to depart from the rule? So rigidly and absolutely has this rule been enforced, that when counsel have either overlooked or apparently waived it, the court, upon observing the defect, has itself raised the objection.

In *Edmondson vs. Bloomshire*, 7 Wall., 306, the case was fully argued on the merits by counsel of both sides, when it was suggested from the bench that doubts were entertained by it as to the jurisdiction of the court over the case, the ground of the doubt being that while the record showed that the only appeal asked for or allowed was that of May 26, 1860, the transcript was not filed during the term next succeeding the allowance of the appeal, nor till January, 1866, and thus, that while the appeal had been taken in time, the record had not been filed here in time to save it. The case was argued in support of the jurisdiction by that very eminent lawyer, Mr. Stanbery, who cited the principal authorities now relied upon by appellants' counsel, aside from those cited in our opening brief. The appeal was dismissed, the court, after reviewing the leading cases previously decided, saying:

> These principles have received the unanimous approval of this court and have been acted upon in a large number of cases not reported, besides several reported cases not here mentioned. And the court has never hesitated to act on this rule whenever it has appeared from the record that the case came within it, although no motion to dismiss was made by either party. In fact, treating it as a matter involving the jurisdiction of the court, we cannot do otherwise.

This case, and the other cases cited in our opening brief, seem to us to determine the question beyond all possible cavil.

II.

There is, if possible, even less in the position that the appearance of the appellees, and the filing of an agreement for the substitution of the personal representatives of John Lyle, who had deceased since the docketing of the cause in this court, in any manner enlarged the jurisdiction of this court to determine the cause upon its merits, or affected the rights of the appellee.

The order of the court substituting the personal representatives of John Lyle, pursuant to an agreement of counsel of the respective parties, places the case in no other or different posture from that it would have occupied if the personal representatives of John Lyle had alone appeared, suggested his death, and upon their application, been substituted as parties appellants.

It by no means follows, as contended by appellant's counsel, that the possessing and exercising of jurisdiction to substitute a proper party upon the record, implies the existence of jurisdiction for all purposes. No such conclusion can be legitimately drawn from such premises. Take, as an illustration, a case involving less than the jurisdictional amount, or in which no federal question is involved, and in which the appellant has died. No one could question the jurisdiction of the court, either upon application of the personal representatives of the deceased alone, or upon their agreement with the appellee to order the substitution of the personal representatives of such deceased party. In fact such order would precede, and be preliminary to, any further or other steps to be taken in the case. But the making of such an order would not and could not confer upon this court jurisdiction to decide a case not appealable to it. In every case it is necessary to have proper parties before the court before it can proceed to the determination of any question involved. These considerations show this position of appellants' counsel to be wholly untenable.

III.

The position of appellants' counsel that the appellees are estopped, by their course of conduct, to insist that this appeal be dismissed, scarcely demands notice. The only conduct of which appellees have been guilty, is the signing of a written stipulation, pursuant to, and in compliance with, an oral agreement made when the citation was served, that the clerk should certify to this court a copy of the abstract of evidence, and a transcript of certain pleadings, papers and record entries, and that upon these the cause should be submitted. If counsel had refused to sign the stipulation when presented, they would have been open to the charge of having acted in bad faith. The signing of said stipulation can have no other or further effect than it would have had if it had been signed at the time the oral agreement was made. In fact, for all purposes connected with this case, it must be treated as having been signed at that time. Counsel for appellee have done nothing to impede or delay the filing of the transcript in this court, but, upon the contrary, have furnished every facility for bringing the cause into this court at the earliest practicable moment, and with the least possible expense.

IV.

Counsel contends that the signing of the stipulation of June 17, 1889, constituted the taking of a new appeal. In support of this position counsel cites *Goodwin vs. Fox*, 120 U. S., 775, *Brown vs. McConnell*, 124 U. S., 489, and *Stewart vs. Masterson*, 124 U. S., 493.

In *Goodwin vs. Fox*, the appeal was prayed and allowed in open court, on the 6th day of August, 1884, upon the filing of a bond to be executed in the future. Because of the incomplete state of the record, by stipulation, the court ordered that the time for executing the bond be extended from time to time. The bond was approved by the district judge June 20, 1885, and counsel for appellee indorsed upon the bond that as to form and surety it was satisfactory. It was held that the various orders and approval of the bond were equivalent to renewing the allowance of the appeal in open court, in the presence of both parties, and that the appeal was properly docketed for the October term, 1885.

In *Brown et al. vs. McConnell*, it was held that a citation signed by a justice of the court from which the appeal was taken was sufficient to constitute an appeal to the supreme court without the taking of security.

The same holding was made in *Stewart vs. Masterson*. In all of these cases the direct action of the court below was invoked and was secured. In the first case in the orders made from time up to and including the time of signing the bond, and in the approval of the bond; and in the other two, in the issuance and signing of the citation. These cases bear no kind of analogy to the present, and it is a matter of no little surprise that counsel should cite them to support his position. That the case of *Brown vs. McConnell* is opposed to appellants' contention, is apparent from the following portion of the opinion :

> All that need be done to get an appeal is for the appellant to cite his adversary in the proper way to appear before this court, and for him to docket the case here at the proper time. Such a citation as is required may be signed by a judge of the circuit court from which the appeal is taken, or by a justice of this court. * * * To get an appeal after the term at which the decree is rendered, a party must apply to the proper justice or judge to sign a citation.

It can not be that the practice has so degenerated that without application to the court which rendered the decree for an allowance of appeal, without allowance of appeal, without approval of bond, without citation and without any action upon the part of the court below, the parties can procure an appeal to this court by simply executing and filing with the clerk, in vacation, and nearly two years after the rendition of the decree, a stipulation that the clerk may certify to the supreme court certain portions of the record, upon which the case shall be submitted. In order to get at the real import and effect of the stipulation of June 17th, the application for appeal, allowance of appeal, appeal bond and citation must be eliminated from the case, and the stipulation must stand alone, unaided and unsupported. We doubt whether, thus considered, even counsel for appellant are sanguine enough to believe that the stipulation of June 17th constituted a new appeal. That counsel upon neither side believed that they were stipulating for a new appeal, or intended to do so, is apparent from the stipulation itself.

In this stipulation is contained the following:

> The pleadings, papers and record entries, referred to, with their dates of filing, are as follows:
>
> * * * * * * *
>
> Petition for appeal and order allowing .... October 2, 1888.
> Appeal bond .... October 2, 1888.
> Original citation .... October 2, 1888.

The certifying to this court of the petition for appeal and order allowing it, the appeal bond and citation are inconsistent with any claim that counsel intended to stipulate, or supposed they were stipulating, for a new appeal. We submit that this portion of appellant's argument is sustained by neither precedent nor principle.

V.

Appellants' counsel say that they have been guilty of no delay or *laches* in reference to this case. It may be that a failure to file a transcript in this court for more than seven months after it was all practically prepared and ready for certification, and until two months after the adjournment of the term to which the appeal was taken, does not constitute delay or *laches*, but we respectfully submit that such conduct is usually characterized by the employment of those terms.

We submit that no reason has been presented why this appeal should not be dismissed.

Respectfully submitted,

Wm Phillips

James W Day

Solicitors for Appellees.

ADDENDA.

We feel that an apology is due this court for the fact that our argument does not more closely and logically follow the argument of appellants' counsel, and that it fails to respond to some of the positions therein taken. Our motion to dismiss the appeal, with the brief accompanying it, was served upon appellants' counsel before the 17th day of January, 1889, upon which day it was forwarded to this court. No response was made thereto until after office hours on February 15th, when we were furnished simply a statement of the points to be discussed, without citation of authorities, or argument. No portion of the argument was seen until late on the evening of February 18th. We did not see the argument in print until the morning of February 20th, when we found the order materially changed, and much inserted that we had not before seen. Our argument, in order that it might reach your honors in time for the submission of the motion, of necessity had to be largely prepared and in type, before seeing a copy of appellants' argument. All that is said or insinuated in the argument of appellants' counsel, about the bad faith of appellees' counsel in signing the written stipulation, is fully met and answered by the statement of facts prefixed to appellants' argument in which attention is called to an "oral agreement to submit the case on an agreed transcript, made October 2, 1888."

Having made this oral agreement, we could not, without a disregard of the professional ethics which we have always tried to observe, refuse to sign the written stipulation.

Wm Phillips

James G Day

Solicitors for Appellants.

For the convenience of the court we append hereto printed copies of the affidavits referred to, the originals of which are on file in the office of the clerk.

STATE OF IOWA, }
POLK COUNTY. } ss.

I, James G. Day, being duly sworn, do depose and say that I am a member of the firm of Phillips & Day, practicing attorneys, of Des Moines, Iowa, which firm represented the plaintiff in the case of Loretta and A. C. Shropshire *vs.* John Lyle, heretofore pending in the circuit court of the United States, for the southern district of Iowa, central division, and that I had almost sole charge of said cause, on behalf of the plaintiffs, in said court. That at the time the citation was served upon me, on the appeal of said cause to the supreme court of the United States, Mr. A. H. McVey, of the firm of Cole, McVey & Clark, representing the defendant in said cause, suggested that, in order to avoid expense, an agreement be entered into for the submission of the cause in the supreme court upon certain portions of the record, to be designated, and on the abstract of the evidence, which was used in the submission of the cause in the circuit court. After consultation with our clients, and very soon after Mr. McVey made this suggestion, I informed him that I would sign such stipulation. Some time not later, as I now remember, than the forepart of January, 1889, Mr. McVey brought to our office a transcript of the record in the cause, prepared by the clerk of said court but not certified, and left it for my examination. Within a short time thereafter, and as soon as I was able to give it my attention, and long before the adjournment of the October term, 1888, of the supreme court, I examined the transcript, and made a full memorandum of the portions of the record which I desired to have certified to the supreme court.

Mr. McVey never called for the transcript, and never mentioned the matter, again, until the 12th day of June, 1889, when he came to our office, and called for the transcript. I then gave it to him accompanied with the list which I had long before prepared, of the papers and orders that I desired to have inserted in the transcript. He returned again the same day, saying that upon going over the transcript with the clerk they found it already contained everything I had indicated. I then called his attention to one entry, not contained in the transcript. He took the memorandum away again, saying he would have the order inserted in the transcript. He returned again on the 14th day of June, with a stipulation for me to sign. I told him I wanted to examine the matter, and would have it ready for him the next day, which was Saturday, or the Monday following, which was the 17th. He did not come for the stipulation on Saturday, but came on Monday, the 17th day of

June, and I then signed the stipulation, a correct copy of which is attached to the showing of appellants in resistance of the motion to dismiss appeal. This stipulation was signed solely and only because of the verbal agreement herein referred to, made with Mr. McVey about the tlme the citation was served, and for the purpose, and none other, of carrying out and performing that verbal agreement.

The cost of preparing the transcript, with the exception of copying the one entry before referred to, and certifying the transcript, had all been incurred a long time before, and long before the adjournment of the October term, 1888, of this court.

JAMES G. DAY.

Subscribed in my presence and sworn to before me, by the said James G. Day, this 17th day of February, 1890.

W. B. CROSBY,
Notary Public in and for Polk County, Iowa.

STATE OF IOWA, }
POLK COUNTY, } *ss.*

I, J. D. Jordan, being duly sworn do depose and say that I am, and for many years have been, deputy clerk of the circuit court of the United States, for the southern district of Iowa, central division, and that the transcript in the case of Loretta and A. C. Shropshire *vs.* John Lyle, lately determined in said court, was written out and prepared under my supervision and direction. I do further depose and say that the transcript in said cause was almost entirely written up as early as the 6th day of December, 1888, upon which day Messrs. Cole McVey & Clark, upon a bill previously rendered, paid for the same, and that the portion subsequently prepared was so insignificant that I rendered no bill and made no charge for it. I do further say that I handed the transcript so prepared, to Mr. McVey, of the firm of Cole, McVey & Clark, at his request, for examination, as I now remember, early in January, 1889, and that I never saw said transcript again until a very short time before the clerk's certificate was attached to the same.

J. D. JORDAN.

Subscribed in my presence and sworn to before me by the said J. D. Jordan, this 17th day of February, 1890.

W. B. CROSBY.

[L. S.] *Notary Public in and for Polk County.*

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1174.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES,
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JOHN FISHER AND WILLIAM LYLE, EXECUTORS OF THE
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JOHN LYLE, DECEASED, *Appellants*,

VS.

LORETTA SHROPSHIRE, AND A. C. SHROPSHIRE,
Appellees.

Supplemental Resistance of Motion to Dismiss Appeal.

BRIEF AND AFFIDAVITS.

C. C. COLE, A. H. McVEY & J. S. CLARK, FOR APPELLANTS.
WILLIAM PHILLIPS & JAMES G. DAY, FOR APPELLEES.

P. C. KENYON, LAW BRIEF PUBLISHER, DES MOINES.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN FISHER AND WILLIAM LYLE, Executors of the Estate of, and HESTER LYLE, Sole Devisee of, JOHN LYLE, Deceased, *Appellants*,
versus
LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, *Appellees*.

No. 1174.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES.
SOUTHERN DISTRICT OF IOWA—CENTRAL DIVISION.

C. C. Cole, A. H. McVey & J. S. Clark, *Solicitors for Appellants*.
William Phillips and James G. Day, *Solicitors for Appellees*.

ADDITIONAL ARGUMENT AND AFFIDAVITS.

I.

Since the printing and service of the showing in resistance of the motion to dismiss in this case, and on the evening of the 20th of February, 1889, counsel for appellees served upon counsel for appellants, an affidavit and argument in reply, making a new showing in this case and to which we had no opportunity to interpose either affidavits or argument, and we therefore ask the court to consider this additional showing and affidavits in answer thereto, as the same should have been presented to us as a part of the original showing in support of the motion.

II.

Counsel seem to place much reliance upon the affidavits which they have filed in this case. As we understand the rule as set forth in the case of *Dodge vs. Woolsey*, 18 Howard, 331, that affidavits outside the record in behalf of a mover of a motion to dismiss will not be considered, but this court has frequently considered affidavits in resistance of motions to dismiss.

Counsel lay stress upon the fact that the transcript was substantially completed, although not entirely, in January, 1889. The facts are that the transcript was taken by counsel for appellants on January 7, 1889, and on the day it was furished by the clerk, together with a written stipulation, to counsel for appellees for them to sign the stipulation thus prepared, and the delay in signing the stipulation, and in completing the transcript, was not on account of any laches on the part of counsel for appellants, but because counsel for appellees deliberately, and it would seem from their affidavit, purposely delayed the examination and preparation and signing of the stipulation. Counsel for appellants were diligent in trying to get the stipulation signed. They fully relied upon the oral agreement, that the case should be submitted upon an agreed transcript and supposed that counsel would carry the same out in good faith. They presented the transcript and stipulation in ample time to have them signed, and counsel for appellees delayed from time, upon one pretense and another, the signing of the stipulation, until after this court had adjourned the term, whereupon they promptly signed the stipulation without any intimation whatever that they intended to move for a dismissal (see affidavits hereto attached).

We do not say it is a fact, but, from the affidavit of counsel for appellees, wherein he states that he would not have signed the stipulation in June, but for the fact of the oral agreement in October, and from the undisputed fact that the stipulation was prepared and served and taken to counsel in January, in ample time to have had it filed during the term; we think we are justified in the inference that it was the intention on the part of counsel for appellees, from and after January 7th, to delay the submission of the case until the term should adjourn. If it was not their intention, then their neglect to sign the stipulation, and the laches, which they were guilty of, in failing to complete what had been placed in their hands, and in then signing the stipulation without any protest, whatever, should estop them from now taking any advantage of the situation.

If there was no fraudulent intention on the part of counsel for appelles, yet the circumstances under which this case was stipulated, and the transcript filed, the delay or refusal of counsel to sign the stipulation, and all the facts and circumstances in the case do work a fraud upon the counsel for appellants and their clients; if, under these facts, counsel for appellees are allowed to insist upon the rule, it is wholly immaterial whether there was any intent to mislead; the material fact remains that counsel for appellants' were mislead, and what was done was entirely sufficient to mislead competent and prudent counsel; it is just as important to the party wronged as though there was an intention. We do not wish to impute deliberate fraud on the part of counsel for appellees in this matter, but we do say that the facts in this case, in our judgment, if permitted to operate as a dismissal of this case do, in point of fact, work a fraud upon appellants, because they, in good faith, relied upon the facts and circumstances and agreements in this case, and counsel for appellees must have known they were so relying, during the entire progress of the matter.

Counsel for appellants promptly ordered and paid for the transcript. On the day it was furnished they took it to counsel for appellees, with a stipulation written out. They afterwards sent for it but not until June 17th could they get the transcript and stipulation. The delay was not on account of the laches of the counsel for appellants, but because of the delay and laches of counsel for appellees. If they had promptly signed the stipulation as agreed the transcript would have been at once filed (see affidavits).

Certainly this court will not give its high sanction to a practice which will deprive parties for a trial upon the merits under such a state of facts as are shown to exist in this case.

We insist that no advantage should be taken of a state of affairs for which counsel for appellees were certainly largely responsible, and therefore ask that the motion to dismiss be overruled.

C. C. Cole

A. H. McVey

J. S. Clark.

AFFIDAVITS.

We append printed copies of the affidavits referred to; the originals are on file with the clerk of this court:

STATE OF IOWA, }
POLK COUNTY. } ss.

I. A. H. McVey, being first duly sworn, do on oath depose and say that I am one of counsel for the appellant in this cause; that I have been connected with said cause through its entire progress through the United States circuit court, and in this court, and am familiar with all the facts connected therewith. That about the time said appeal was taken counsel for appellants entered into an oral stipulation with counsel for appellees, to agree the transcript in said cause which was very voluminous, and both counsel gave some direction to the clerk in pursuance of said understanding. Appellant soon after deposited with the clerk the necessary money to pay for said transcript.

I further state that immediately after the transcript was made out by the clerk, and on January 7, 1889, I took the same and prepared a stipulation in accordance with the understanding had with counsel for the appellees. That said stipulation was written out by a type-writer and that I took said stipulation on said day and the transcript and delivered them to James G. Day, one of counsel for appellees; that said Day at that time refused to sign said stipulation and stated as a reason for so declining that he wished to look over the transcript and to make some changes in the stipulation and I left the stipulation that I had prepared and the transcript with said Day. If said stipulation had been signed as agreed, when presented, the transcript would have been promptly forwarded to the clerk and the cause docketed.

Said stipulation was presented to counsel for appellees on January 7, 1889, and is in words and figures as follows:

"IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF IOWA—CENTRAL DIVISION.

LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, *Plaintiffs*,
vs.
JOHN LYLE, *Defendant*.
} *Stipulation.*

It is hereby stipulated by and between the parties to this suit, that the foregoing transcript is a complete record of the evidence, pleadings and journal entries in the case, and that the said cause shall be submitted to the supreme court of the United States upon the foregoing record."

I afterwards sent over for said transcript and stipulation and it was not yet prepared or signed, and it was not until June, 1889, that it was possible for me to get the stipulation signed by counsel for appellees (see affidavit of J. S. Clark herein). When I went in June, as stated, the stipulation was not yet prepared by the said James G. Day and at that time he insisted upon some changes being made in the transcript and that some papers should be added thereto. This change was made according to his suggestions, a new stipulation prepared in full, being the one attached to appellants showing in this case and signed by counsel for both parties. Neither at the time said stipulation was finally signed nor at any other time did counsel for appellses intimate in any manner whatever that they would not have signed said stipulation but for the oral agreement. Counsel for appellants had no intimation of any kind from counsel for appellees that it was because of the oral agreement that they, in June, signed the stipulation, but at all times from the time the appeal was taken until this motion was made to dismiss, counsel for appellees treated the appeal as though it was taken in good faith by both parties and acted in every respect as though they fully intended to submit the case upon its merits without any motion.

Thereupon on the said 17th day of June, counsel for appellee and appellants entered into said stipulation for the submission of said cause upon said transcript, so agreed, which stipulation and agreement is attached to the record in this cause and is set out in full therein. After said stipulation was signed, the clerk of the circuit court compared the transcript with all the documents; made all the necessary changes to make it clerically correct; added the papers provided for by the stipulation in June, and delivered it to counsel for appellants when completed. Counsel for appellees caused said agreement to be filed on the 19th day of June, 1889, in the office of the clerk of the circuit court of the United States, and transmitted the original, together with the transcript to this court on June 29, 1889, where the case was filed and docketed about July 12, 1889.

Affiant avers the fact to be that at no time did counsel for appellees ever intimate or suggest in any way, directly or indirectly, that they would move to dismiss this cause, until notice thereof was given about the last of January, 1890. That counsel for appellants were led to believe, and did believe, that counsel for appellees intended to submit said cause upon its merits and upon said agreed transcript; that they fully relied upon the good faith of counsel for appellees and paid for said transcript; made the necessary deposit with the clerk, and did all things in connection with said cause, with the full belief and understanding and in full reliance upon the fact that said cause would be submitted upon said transcript, and that no advantage whatever would be taken of a failure to file the same at the next term. That so soon as said transcript was completed and said agreement was entered into, that the same was forwarded to the clerk, with reasonable diligence and dispatch. That it has not been the purpose of the appellant to delay the hearing of this case, but that the appellants' counsel and appellants have been anxious to dispose of this cause at the earliest practicable day, since said appeal was taken, and that no act of the appellant, or his counsel or solicitors, was intended by them, directly or indirectly, to delay, in any way, the progress of this suit, but that the whole proceedings under this appeal have been conducted with the utmost fairness and good faith on the part of the appellants and their counsel.

Further deponent saveth not. A. H. McVEY.

Sworn to before me and subscribed in my presence by the said A. H. McVey on this 21st day of February, 1890.

[SEAL] J. S. CLARK, *Notary Public.*

AFFIDAVIT OF J. S. CLARK.

IN THE SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1889.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS OF THE ESTATE OF, AND HESTER LYLE, SOLE DEVISEE OF, JOHN LYLE, DECEASED, *Appellants,*
versus
LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, *Appellees.*
No. 1174.

STATE OF IOWA,
POLK COUNTY, } *ss.* I, J. S. Clark, do on oath say that I am a member of the firm of Cole, McVey & Clark, practicing attorneys of Des Moines, Iowa, solicitors for defendant in the case of Loretta Shropshire and A. C. Shropshire *vs.* John Lyle, heretofore pending in the circuit court of the United States for the southern district of Iowa, central division. That about the —— day of April, 1889, A. H. McVey, the member of my firm having special charge of said case, asked me to call at the office of Phillips & Day for the record, which he had theretofore submitted to James G. Day for inspection. That in pursuance of that request and on that date, I called for the record, as requested. James G. Day stated to me that it was not yet ready for delivery; that he was going to make some changes in the stipulation, which Mr. McVey had prepared, or a new stipulation, which, when ready, he would submit to Mr. McVey. My recollection is, that he said that he had not yet examined the transcript as fully as he desired. I reported the facts above stated to Mr. McVey upon my return to the office of Cole, McVey & Clark.

Further deponent saveth not. J. S. CLARK.

Sworn to before me and subscribed in my presence by the said J. S. Clark on this 21st day of February, 1890.

[SEAL] F. S. FRACKER, *Noary Public.*

Office Supreme Court, U. S.
FILED.
FEB 28 1890
[illegible]
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1174.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS OF THE ESTATE OF, AND HESTER LYLE, SOLE DEVISEE OF, JOHN LYLE, DECEASED, APPELLANTS,

vs.

LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION.

Additional Affidavit of James G. Day.

I, James G. Day, being duly sworn, do depose and say that after my departure from Des Moines to attend the session of the Supreme Court at Washington, and on the 24th day of February, 1890, appellants' counsel served upon my partner, at Des Moines, Iowa, a printed copy of their supplemental resistance of motion to dismiss appeal and a printed copy of affidavits, which said copy of resistance of motion and affidavits was filed in the office of the clerk of this Court February 27th, 1890, and of which I first had knowledge about 3 o'clock p. m. of said day. The facts attending the preparation of appellants' argument in response to our original brief are accurately and truthfully set forth in the addenda to our argument in reply, page 12, with this additional, that appellants' argument was served upon appellees' counsel at about the hour of 4 o'clock p. m. February 20th, 1890, and our reply was served upon appellants' counsel at the hour of 5 o'clock p. m. of said day, and only four hours before affiant left Des Moines for Washington to present the motion in this case, which was noticed for submission on the following Monday, February 24th. I do further depose and say that it is *not* true, and that there is no shadow of ground for stating that at the time the transcript was left with me by Mr. McVey I refused to sign any stipulation, and that I was not asked at that time by Mr. McVey to sign any stipulation, but that the transcript was left solely and only for my examination, that I might ascertain whether or not it was correct; and I do further depose and say that from that time Mr. McVey never mentioned nor in any manner alluded to either transcript or case until the 12th day of June, 1889, when I immediately handed him the transcript, as stated in former affidavit, herewith submitted. I do further depose and say that the only time which I ever asked and the only delay which was ever occasioned by any act of mine, either directly or indirectly, was from the 14th day of June to the day following, which was Saturday, or the following Monday, which was the 17th; that I would have signed the stipulation on Saturday if Mr. McVey had called for it, but that he did not come until Monday. I do further depose and say that I never had any communication or transaction with Mr. Clark, a member of the firm of Cole, McVey and Clark, respecting said case except to ask him once in his own office whether Mr. McVey had been advised of the time when the transcript would be printed, once to ask him whether he had heard that Mr. Lyle was dead, and once or twice to ask him whether Mr. McVey had taken steps to ascertain whether a will had been made and who were the executors. I do state positively that it is not true that Mr. Clark, in the month of April, 1889, or at any other time, called at the office of Phillips & Day when I was present in the office and asked for the record in the case. I do further state that I never at any place or at any time had any communication with Mr. Clark about the transcript in the case, and that I never told him that it was not ready for delivery; that I was going to make changes in the stipulation, which I would submit to Mr. McVey, and that I had not examined the transcript as fully as I desired, nor anything of that substance or import. I do further say that I never, by word or act, in any manner, did anything to delay or prevent the filing of the transcript in said cause. I do further depose and say that Mr. McVey, when he asked for the transcript, June 12th, 1889, said that he must not allow his two years to pass by, but that he had plenty of time yet, and that the two years would not be up until October.

James A. Day

Subscribed in my presence and sworn to before me by James G. Day this 28th day of February, 1890, at the City of Washington, D. C.

Seal

Chas B. Beall
notary public

I, James G. Day, being duly sworn, do depose and say that on the 28th day of February, 1890, I placed in the post office at Washington, D. C., a copy of the foregoing affidavit in a securely sealed envelope, with the proper postage placed thereon, addressed to Cole, McVey & Clark, Des Moines, Iowa.

James G. Day

Subscribed in my presence and sworn to before me by James G. Day this 28th day of February, 1890, at the City of Washington, D. C.

Seal

Chas B. Beall
notary public

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1174.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS OF THE ESTATE OF, AND HESTER LYLE, SOLE DEVISEE OF, JOHN LYLE, DECEASED, APPELLANTS,

vs.

LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION.

Further Affidavit of James G. Day.

I, James G. Day, being duly sworn, do depose and say that the transcript in the above case was brought to my office some time in January, 1888, by Mr. McVey, not at my request but of his own motion, for my examination.

That the stipulation which then accompanied it was essentially and in material respects different from the stipulation subsequently signed, and would have involved the necessity of my reading the whole transcript as well as all the evidence in the case. (See resistance of motion to dismiss appeal, pages 13 and 14, for the stipulation signed, and supplemental resistance, page 5, for the stipulation left at my office.)

I do further say that I was not requested to return the transcript to Mr. McVey, and had no idea that I was expected to do so.

That the oral agreement that I made with Mr. McVey was for the benefit of his client, to avoid expense.

That Mr. McVey having brought the transcript to my office and left it there, I supposed he would himself call for it, and that he never asked for it nor mentioned the case until the 12th day of June, 1889, which, as I am advised, was about one month after the October term, 1888, of this Court had adjourned.

JAMES G. DAY.

Sworn to and subscribed before me this 4th day of March, 1890.

JAMES D. MAHER,
Notary Public.

Service of above affidavit accepted this 4th day of March, 1890.

A. H. MCVEY,
Solicitor for Appellants.

IN THE

Supreme Court of the United States.

October Term, 1890.

No. 1174.

JOHN FISHER and WILLIAM LYLE, Executors of the Estate of HESTER LYLE, sole devisee of JOHN LYLE, deceased, Appellants,

vs.

LORETTA SHROPSHIRE and A. C. SHROPSHIRE, Appellees.

Appeal from the Circuit Court of the United States, Southern District of Iowa, Central Division.

Affidavit and Argument in Answer to Affidavit of Appellees, Filed February 28, 1890.

Counsel for appellants could not, under the agreement, file the transcript until the stipulation was signed by counsel for appellees, and counsel for appellees did not sign the same until after this court had adjourned, although both stipulation and transcript were placed in their hands by counsel for appellants on January 7, 1889. Thus was it in appellees' power to delay the filing beyond the term, and they here come into court and ask to take advantage of their own wrong.

We call the attention of the court to the affidavit of counsel for appellees filed February 28, and to the following affidavits in answer thereto. This affidavit of counsel tends to mislead the court, unless it is very carefully read. Counsel does not deny but what the stipulation was handed to him, together with the transcript, in January, 1888, but says he was not asked to sign it. We submit that this language is wholly unwarranted by the facts and is the veriest quibble. Counsel has before admitted and stated in his own affidavit, that it was agreed when the case was appealed that it should be by stipulation. When counsel for appellant thereafter procured the transcript, and attached a stipulation to the transcript, as stated in our former affidavit, and handed it to counsel for appellees, as is admitted, this was as forcible a request that it be signed as if, in terms, the request had been made, and we submit that the facts show that he was actually requested to sign it. It is apparent in this case that it was the understanding and agreement of all parties to submit the case upon stipulation, and that in January, 1888, counsel for appellants did deliver the same to counsel for appellees, who *retained in their possession both stipulation and transcript* until June, 1889.

And it is further apparent, that in good faith, through every stage of the case, counsel for appellant proceeded on the faith of that agreed stipulation, and it would work a fraud most detrimental to the appellants to now permit counsel to take advantage of this good faith thus rightfully reposed and, which it is everywhere manifest, counsel for appellants did rely upon; and which understanding counsel for appellants had a right to presume would be honestly and fairly carried out.

C. C. Cole
A. H. McVey
J. S. Clark
Counsel for appellants

We call the attention of the court to the following affidavits:

I, A. H. McVey, being duly sworn, depose and say that I have read for the first time this day the second affidavit of James G. Day in said case filed in the office of the clerk of this court February 28, 1890; that the same was not served on the counsel for appellants until March 3, 1890. I further state that James G. Day, the party who made said affidavit, admitted to me in the presence of A. S. Worthington, Esq., in the clerk's office of this court, this day, that A. H. McVey, of counsel for the appellants, did, soon after said transcript was completed, about January, 1888, deliver to said Day, of counsel for the appellees, the said transcript, and that attached to it there was a stipulation in substance the same as is set out in the supplemental resistance of motion to dismiss, already filed by the appellants in this case; that said Day in substance stated that what he meant by the language used in his said affidavit, was that said McVey did not in terms ask him to sign the stipulation, but admitted that the stipulation was handed to him at the same time the transcript was given to him. I further state that in point of fact I did present the stipulation and the transcript together to said Day, in January, 1888, and while I may not have said "Will you now sign the stipulation?" yet it was presented to him in such a way that he must have known that was the intent, as we had before agreed that we would submit the case on stipulation. When I prepared the stipulation I took it to said Day with the transcript for the purpose, and the only purpose, of procuring his signature to the stipulation, and this he must have known, and my recollection is that I did distinctly say to him that I had caused to be prepared the transcript, and that I had also prepared a stipulation, and I asked him to examine and approve the same at that time; and at no time did he ever intimate, directly or indirectly, that he would not sign the stipulation, but then stated he would take the transcript and stipulation, examine the same, and make such changes as he wished; neither did he ever return to the counsel for appellants the transcript, *nor did he sign the stipulation* until in June, but at the time it was first given to him, together with that stipulation, he requested that it be left together with the stipulation and transcript for his examination and approval. I have no recollection whatever of saying to said Day, in June, 1889, or at any other time, that I had plenty of time in which to file the transcript, or that I had until October. The whole matter of appeal was by stipulation. By the stipulation was eliminated a very large mass of the record and testimony, and it was with that purpose in view that the stipulation was made and signed by both parties.

A. H. McVey

Subscribed in my presence, and sworn to before me, by A H. McVey, this 4th day of March, A. D. 1890, at the city of Washington, D. C.

(Seal) James D. Maher
Notary Public.

Affidavit of A. S. Worthington.

I, A. S. Worthington, being duly sworn, do depose and say, that I am a member of the bar of this court, residing in Washington, and that in the office of the clerk of this court on March 3, 1890, I heard James G. Day, counsel for appellees, state to A. H. McVey, counsel for appellants, that it was true that when Mr. McVey first handed him (Day) the transcript of this case, there was attached to the transcript a stipulation, which was submitted with the transcript to him.

A. S. Worthington

Subscribed in my presence, and sworn to before me, by A. S. Worthington, this 4th day of March, 1890, at the city of Washington, D. C.

(Seal) James D. Maher
Notary Public

54

Office Supreme Court U. S.
FILED.
NOV 4 1892
JAMES H. McKENNEY,
CLERK.

Brief for Appellants.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS, AND HESTER LYLE, SOLE DEVISEE OF JOHN LYLE, DECEASED, APPELLANTS,

vs.

LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

A. H. McVEY, SOLICITOR FOR APPELLANTS,
DES MOINES, IOWA.

GEO. A. MILLER, PRINTER, DES MOINES, IA.

the stipulation and transcript for his examination and approval. I have no recollection whatever of saying to said Day, in June, 1889, or at any other time, that I had plenty of time in which to file the transcript, or that I had until October. The whole matter of appeal was by stipulation. By the stipulation was eliminated a very large mass of the record and testimony, and it was with that purpose in view that the stipulation was made and signed by both parties.

A. H. McVey

Subscribed in my presence, and sworn to before me, by A. H. McVey, this 4th day of March, A. D. 1890, at the city of Washington, D. C.

(Seal) James L. Maher
Notary Public.

Affidavit of A. S. Worthington.

I, A. S. Worthington, being duly sworn, do depose and say, that I am a member of the bar of this court, residing in Washington, and that in the office of the clerk of this court on March 3, 1890, I heard James G. Day, counsel for appellees, state to A. H. McVey, counsel for appellants, that it was true that when Mr. McVey first handed him (Day) the transcript of this case, there was attached to the transcript a stipulation, which was submitted with the transcript to him.

A. S. Worthington

Subscribed in my presence, and sworn to before me, by A. S. Worthington, this 4th day of March, 1890, at the city of Washington, D. C.

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DES MOINES, IOWA.

GEO. A. MILLER, PRINTER, DES MOINES, IA.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1892.

JOHN FISHER and
WILLIAM LYLE,
Executors, and
HESTER LYLE,
Sole devisee of John Lyle, deceased,
APPELLANTS,
vs.
LORETTA SHROPSHIRE
and
A. C. SHROPSHIRE,
APPELLEES.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

This action was commenced by the appellees in the state court to enforce a vendor's lien, and by the defendant was removed into the circuit court of the United States, where it was filed October 16, 1883.

In the year 1878, John Lyle resided in Kewanee, Illinois, and was then more than seventy-two years of age. Loretta Long, a widow residing in Jasper County, Iowa, had in 1876, intermarried with A. C. Shropshire, of Kentucky. Mrs. Shropshire was in 1878, about 35 years old and her husband 8 years her senior.

All three of the parties were interested in stock raising. The evidence shows that the Shropshires, after their marriage resided in Jasper County, Iowa, on the farm out of which this controversy grows, consisting of 540 acres. Mrs. Shropshire was administratrix of her first husband's estates, and became much involved personally and as administratrix, and in the year 1878, Mr. and Mrs. Shropshire negotiated a loan from John Lyle in the sum of $4,250, out of which the land which had been sold at sheriff's sale was redeemed, and other debts were paid.

There was at this time a mortgage on the farm in question in favor of the German Savings Bank, for $10,000. This loan was made in 1877, both the note and mortgage being signed by A. C. Shropshire and his wife.

The interest on the German Savings Bank loan fell in arrears, and John Lyle, in the spring of 1878, paid the interest on this mortgage, and in the spring of 1879, to prevent its foreclosure, Mr. Lyle purchased the mortgage paying the full sum of $10,000 therefor, and accrued interest. No notes were executed in favor of Mr. Lyle for these sums of money. In March, 1878, A. C. Shropshire and wife executed quit claim deeds for the farm to John Lyle, the first one for 500 acres, the second for 40 acres, and Jehu Rheinhart, who had purchased the 500 acres at sheriff's sale, also executed and delivered to John Lyle, a quit claim for the same.

A further quit claim deed was executed May 1, 1878, by A. C. Shropshire and wife, in favor of John Lyle, conveying the 540 acre farm, the consideration named being $14,250 (record, page 109).

In the spring of 1878, immediately after the loan of the $4,250 to the Shropshires, Mr. Lyle began advancing cattle and money to the Shropshires to stock the Jasper county farm, and up to 1879 he had let them have, in money and stock, from

$6,000 to $8,000. At the same time there had been an exchange of stock and notes, and Mr. Lyle had received from the Shropshires, on these advances to stock the farm, about $3,000. It soon became apparent that the Shropshires could never repay Mr. Lyle, and it was agreed that Mr. Lyle should purchase the farm for $40 per acre, and on the 27th day of January, 1880, the parties had a settlement, and the Shropshires rented the place, and next year removed from the farm. Mr. Lyle rented the farm and nothing further was said about the matter until February, 1883, when a suit was quietly begun by publication, although Mr. Lyle's residence was well known, both to the plaintiffs and their attorneys, and Mr. Lyle was by the merest accident advised of the existence of the suit.

Prior to the commencement of this suit the farm was sold to George Lyle, who took possession of the same, but no deed was made to George Lyle until a few days after the petition was filed, neither of the Lyles knowing that suit had been brought. Most of the purchase price had been paid by George Lyle before the bringing of this suit.

The court, by an interlocutory decree (record, page 38), found that the three deeds in question were mortgages, that John Lyle agreed to take the land at $40 per acre, and that the case should be referred to a master in chancery to report the facts. To this decree neither party excepted.

The report was afterwards filed (record, page 39), to which exceptions were duly filed (record, page 45), and the court in its opinion, notices two of the exceptions and approved the report of the master without any examination of the facts, so far as the opinion discloses, (record, page 49), and entered a decree for the complainant for a vendor's lien, which now amounts to nearly $15,000 (record, pages 51–53).

A chronological statement of the history of this case will be found in the record, pages 55–58.

ASSIGNMENT OF ERRORS.

1. The court erred in holding that complainants were entitled to a vendor's lien.

2. The court erred in holding that complainants were entitled to a vendor's lien for items of account growing out of numerous transactions between the parties.

3. The court erred in overruling the exceptions to the master's report as to the indebtedness of complainants to John Lyle and should have found that complainants were jointly indebted to John Lyle in the sum of $26,000.

4. The court erred in overruling the exceptions to the master's report as to the separate indebtedness of A. C. Shropshire and should have found that such indebtedness was the joint indebtedness of A. C. Shropshire and Loretta Shropshire and that it was $8,000 instead of $5,778.80.

5. The court erred in overruling the exceptions to the master's report as to the payments made by the Shropshires to Lyle and should have found that as to such payments that they amounted to but $2,400 and that this sum should have not been credited on the $18,687.13 loan of Lyle to the Shropshires but should have been applied in payment of third item in the master's report.

6. The court erred in overruling the exceptions to that part of the master's report wherein he finds there was no settlement on the 27th day of January, 1880, between the parties, but should have found that there was a settlement between the parties on that date.

7. The court erred in overruling the exceptions to the sixth and seventh items of the master's report, but should have found that such payments as were made by Shopshires were by the understanding and intention of the parties to be applied on the general items of account held by Lyle against the Shopshires.

8. The court erred in overruling the exceptions to the report and in approving the same as a whole.

9. The court erred in finding there was anything due from the defendent to complainants.

10. The court erred in decreeing the sale of appellant's lands.

11. The court erred in refusing to require George Lyle to be made a party to the action and in overruling defendant's motion to dismiss for non-joinder of parties.

12. The court erred in rendering judgment for the complainants.

ARGUMENT.

I.

THE MASTER, AND THE COURT BELOW.

This case presents separate questions of law and fact for the determination of this court.

It should be borne in mind that the master heard no witnesses testify in the case. It was heard by him on precisely the same evidence as is presented in this record, and so far as the record shows, the court below affirmed the report of the master without consideration, as the opinion found on page 49 of the record fails to make any reference to the facts found by the master, and proceeds to discuss a question of law, assuming that the findings were correct, entirely ignoring the exception therein. The referee gives no reasons for his findings and quotes no evidence in support thereof.

So far as the findings of fact in this case are concerned, we have simply the opinion of one man who reports without reasons, and decided without quoting evidence; and so far as the law is concerned we have the opinion of one judge who briefly gives his reasons on one or two points of law, and seems to accept the master's report without question.

This is an equity cause, and is triable *de novo* in this court, and while we are aware of the rule adopted by this court which places the burthen on the appellant and makes the master's report *prima facie* correct; yet the facts of this case, the circumstances of the trial, the absence of reasons, and evidence in support of the findings, we submit do not entitle the report to a very high degree of consideration or the decree under the circumstances as approving the same except as *pro forma.*

In the case of *Tilghman vs. Proctor*, 125 U. S., 136, where the rule as to the effect to be given to a master's report was announced, on page 151 it is said:

"Upon comparing the master's report with the evidence, we are unable to accept his conclusions."

So, when this court compares the master's report in the case at bar with the evidence, we submit the court will be unable to accept the master's conclusions.

II.

The court erred in decreeing a vendor's lien in favor of complaintants in this case. Under this subdivision, we desire to discuss the first two assignments of error.

The contract price agreed upon for the sale of the farm. between the parties to this suit was $40 per acre or $21,600 as found by the court, and to which finding there was no exception. The loans made by Mr. Lyle on the farm up to the date of the sale, the referee has found to be $18,686.13, thus leaving a balance due the complainant of $2,912.87, and if the balance due Lyle on advances for stock had been credited, there would have been no balance in favor of complainants,and in the face of this fact a decree has gone forth finding that the complainants are entitled to a vendor's lien for the sum of more than $10,000. The court below incorporated in the decree matters of account and decreed that the complainants were entitled to a vendor's lien therefor.

A.

Vendor's liens are not favored in the law. They are in the nature of secret trusts, and are in contravention of the statute of frauds and in violation of long established registry laws.

Jones on Mortgages, section 191, says:

"The doctrine has either been rejected from the beginning, or, having prevailed at one time has since been expelled by statute, although it may be that in a few states the question of its existence has not been definitely decided. In the courts of the United States the doctrine has never been affirmed, except where established by the local law of the different states. The doctrine, even in those states that have adopted it, has frequently been criticised and deplored as inconsistent with the general policy prevailing in this country to make all matters of title depend upon record evidence."

"The doctrine is no more satisfactory now than it was in Lord Eldon's time; in fact it is much less so. From the nature of the equity, there could be but few fixed rules regarding it; but it will be observed in following the American decisions, which are numerous, that there is hardly a rule upon the subject that has not been somewhere denied; that hardly any two states can be found in which the courts agree upon all the important points of the doctrine; and that the cases are not rare in which the decisions in the same state are irreconcilable. The remark of Lord Mansfield that 'the more we read the more we shall be confounded,' is not without its application here."

Early cases in Iowa under our statute recognize the status of the vendor's lien. The cases, however, were not satisfactory, and the legislature amended the law and greatly modified the same. Since the adoption of section 1940 of the Code, the doctrine has been greatly modified, and the courts have so held. In this state of the law we beg leave to submit that no vendor's lien should be allowed in this case because the amount claimed was an unliquidated claim. It is settled by the courts that a lien does not exist as a security for on unliquidated and uncertain demand. To this effect see:

Jones on Mortgages Sec. 194.
Payne vs. Avery, 21 Mich., 524.
Patterson vs. Edwards, 29 Miss., 67.
Sears vs. Smith, 2 Mich., 43.
Van Doren vs. Todd, 2 G. N. J., Ch., 397.

That the demand of plaintiff was an uncertain demand there can be no question, because it was not determined until after several days trial what the demand of plaintiff was, and it involved an inquiry concerning a large number of accounts. Consequently the rule that we have stated above fully applies in this case.

B.

The vendor's lien does not attach in this case because the demand was largely one of account. The courts all hold that a vendor's lien is only lawful strictly between the vendor and the vendee for the balance of the purchase money due. Now, there can be no pretense that this is true in the case at bar. Several thousand dollars of accounts enter into this transaction, and it can be said in no sense that the amount found due by the referee is the balance due for the purchase money of the land in question. An examination of the pleadings evidence and the master's report clearly proves that the decree was not for purchase money alone, but was largely a matter of account. The complaint by amendment to bill sets up the account. (Record page 24.) The answer puts matters of account in issue. (Record page 29). The evidence is largely devoted to matters of account. (Record pages 68, 74, 75, 94, 96, 101.)

C.

The vendor's lien does not attach because no *terms* of *payment* for the land were alleged or proved. The only allegation and the only proof was upon the part of the complainant that the land was sold to John Lyle for $42.50 per acre. There is no allegation when this money *should be paid*, there is no allegation that it was to be paid, there are no terms of payment whatever pleaded, claimed, set out or proved, and under this state of facts we maintain that there can be no vendor's lien, because a vendor's lien only attaches where the terms of payment are positive and certain. In the case of *Dutton vs. Outhouse*, 64 Mich., 419, the Supreme Court of Michigan clearly lays down this doctrine. In this case the court says:

> "But when a vendor resorts to a court of equity to declare and enforce his lien, it is necessary that he allege the contract of sale with reasonable certainty, and that the consideration and *terms* of *payment* must be alleged and clearly proven; otherwise the court has no *data* for the enforcement of the lien."

To the same effect is *Mowrey vs. Vandling*, 3 Mich., 39.

In the case of *Waterfield vs. Wilbur*, 64 Mich., 642, this doctrine is *fully set forth*, and maintained by the Supreme Court of Michigan, and it will be observed that the Supreme

Court of Michigan in the case first quoted, take occasion to emphatically declare that the doctrine of vendor's liens is fully enforced in that state. As we have before said, no *terms* of *payment* whatever were alleged in the bill, or proven. The fact is that at the time of the so-called sale to the defendant, that there was no knowledge or expectation on the part of the complainant that any money was due to her. The object and purpose of the so-called sale was to pay the debt due from complainant to the defendant. But however this may be, the fact remains beyond dispute that no *terms* were alleged or proven, and consequently the lien does not attach.

D.

There is no vendor's lien in this case because the deeds from the complainant to the defendant do not reserve any lien. They are absolute in terms, and no lien whatever is even hinted at. Sec. 1940 of the code provides as follows:

> "No vendor's lien for unpaid purchase money shall be recognized or enforced in any court of law or equity after a conveyance by the vendee unless such lien is reserved by conveyance, mortgage or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee, is made after suit brought by the vendor, his executor, or assigns to enforce such lien."

The word "*or*" is construed by the courts as if it were *and*, and this is the true idea that both the reservation and the suit must concur before it attaches and in no case does it attach if there is a deed without reservation.

And this section has been construed by the supreme court of Iowa. It will be observed here that most of the decisions rendered by the supreme court of this state, have been in cases that arose prior to the adoption of this section. In the case of *Rolch vs. Hussey*, 52 Iowa, 694, this position was fully maintained. It was held in that case that the vendor had no lien because he had made an absolute deed and had not reserved in the coveynance any lien and therefore it did not attach. In the case of *Edminster vs. Higgins*, 6 Nebraska, 265, this question is fully and elaborately considered, and the court holds that a vendor of real estate upon an absolute conveyance thereof by deed, has no lien on the land so conveyed, for the purchase money. In deciding the case the court says: "What is a vendor's lien? We are told it is an equitable mortgage for the amount of purchase money of real estate remaining unpaid. But an equitable mortgage grows out of an agreement that a lien shall be created, while a vendor's lien in a case like the one at bar arises, if at all, without a contract, and against the express terms of the deed. Neither is it in the nature of a trust: There is no agreement of any kind that the land shall be held as security for the payment of the purchase money. This is a case where credit was deliberately given, trusting to the solvency of the debtor, and notes, payable in the future, were received by the vendor for that portion of the purchase money on which credit was given. It is difficult to perceive how the land can be charged with a lien not contemplated by the parties. The case would be entirely different if the sale had been for cash, and the deed had been delivered before payment of the consideration. Then the vendee becomes a trustee for the purchase money, and the estate purchased is charged with the trust in the hands of any one except an innocent purchaser without notice."

In *Gilman vs. Brown*, 1 Mason, 192, Story J. said:

> "The lien of a vendor for the purchase money is the *mere creature* of a court of equity, which it moulds and fashions according to its own purposes. It is, in short, a right which has no existence until it is established by the decree of a court in the particular case, and is then made subservient to all the other equities between the parties."

In the case of *Rhea vs. Reynolds*, 12 Neb., 128, the Supreme Court of Nebraska reiterated the doctrine that a vendor's lien cannot exist where there has been an absolute conveyance, unless reserved in such conveyance, or by a separate instrument. It will no doubt be said that the conveyance by the plaintiff to Lyle was not an absolute conveyance, but a mortgage. Now, while this may be true that it was a mortgage at the time of its inception, yet, if there was any contract of sale whatever, if there was any obligation on the part of the defendant to purchase, it is because the mortgage was, at the time of the alleged sale, treated by the parties as a deed, and we submit that they cannot treat the conveyances as deeds for the purposes of making title and for the purposes of showing a sale, and then say that for the purposes of enforcing a vendor's lien that they were mortgages. And if these deeds are mortgages now, and are so to be considered for the purposes of this sale, then the complainant has chosen a wrong remedy. These mortgages are yet to be foreclosed and a balance found due, and the lands ordered to be sold in payment therefor, and the only affirmative remedy upon the part of the complainant would be an action to redeem. So, that if the complainants insist upon a vendor's lien here, it must be upon the basis that they have made conveyance, and that there is a balance due. If a conveyance has been made it was by the deeds in question, and these deeds were absolute upon their face, and no lien was reserved, and consequently both grounds fail. It is immaterial what horn of the dilemma the complainants take. They may either say they are mortgages, that they are mortgages to-day, and the answer is that they have mistaken the remedy, their only remedy in such case being an action to redeem. If they take the other horn and admit that the conveyances were deeds, for the purposes of this sale, then we maintain that the cases above quoted apply.

There is no claim that George Lyle had *actual notice* of any lien or suit, and as to him there is no lien, because the deed was absolute on its face, and George Lyle is clearly within the statute and entitled to protection. If this is not so, then the statute means nothing, because before Section 1940 was enacted the rule was, that there was no lien as to an innocent purchaser, unless he purchased after suit. The statute changed this rule, and holds that where there is an absolute deed from the vendor to the vendee without reservation of any lien, that then no lien can attach, and the case cited in 52 Iowa, 694, so holds. Counsel for complainants take the position that Section 1940 does not apply, because suit was brought before the conveyance to George Lyle. The court will observe that this is a wrong view of the effect of the statute as interpreted in 52 Iowa, 694. We submit, however, that if the interpretation sought to be given the statute by counsel for compainants is correct, that then the lien does not attach.

The court will see on reference to the record in the case, that the petition was filed in the Jasper County circuit court three days before the deed from John Lyle to George Lyle was made. (Record pages 1–89.) The record also shows that John Lyle was at the time a citizen of the state of Illinois, and that *service* was made by *publication*, and that *no affidavit* for publication was made, and no publication in fact commenced until *some weeks* after the deed from John Lyle to George Lyle was made. (Record pages 1, 9, 10). The point we make is, that the conveyance of the vendee, John Lyle was not made "*after suit brought.*" Section 1940 of the Code provides that no lien can attach where there is an absolute deed, unless the lien is reserved, or unless the conveyance by the vendee is made "*after suit brought.*" Now under the statute of Iowa, suit is not brought or commenced until the delivery of the original notice to the sheriff of the proper county with intent to be served immediately. See section 2532. An action is deemed commenced from the delivery of the original notice to the sheriff, *and not from the filing of the petition.* The filing of the petition at common law might amount to a *lis pendens* but not to a "suit brought" in the language of section 1940. It is clear that a *lis pendens* is not meant by section 1940, first, because the language excludes this idea, and second, because a *lis pendens* is at best constructive notice, while in the case referred to in 52 Iowa, 694, the court held that *actual notice* on the part of the purchaser, would not enable the vendor to maintain his lien under section 1940.

Collins vs. Bane, 34 Iowa, 385.
Reed vs. Chubb, 9 Iowa, 178.
Hagar vs. Birch, 8 Iowa, 309.

Elliott vs. Stevens, 10 Iowa, 418.

In the case of *Broska vs. McCormick*, 56 Iowa, 318, it was held that except as to the statute of limitations the commencement of an action for all other purposes dates from the *actual service* of the notice. In the case at bar the record conclusively shows that the service of the notice did not take place until many weeks after the conveyance to George Lyle. Consequently, taking complainant's view of the statute, it clearly appears that there was "*no suit brought*," under section 1940, long after the deed to George Lyle was made, delivered and recorded. Section 1940 is positive in its terms, and we unhesitatingly claim that in neither point of view can any lien attach under section 1940. It is clear, then, that in view of the record in this case that George Lyle is protected against the lien of complainant, absolutely, and, although he is not before this court, yet it is not the fault of the defendant that he is not here. And the court will not do a vain thing by granting the lien which cannot be enforced against George Lyle. The court can see, from the evidence in this case and from the record and the law, that this lien cannot be enforced as against George Lyle. Therefore, under the well-known rule above referred to, this lien should not be established in this case.

III.

THE VENDOR'S LIEN WAIVED AND ABANDONED.

The right to a vendor's lien in this case if it ever existed, which we deny, was clearly waived and abandoned by the complainants. A reading of the evidence must convince an unprejudiced mind that a vendor's lien was never thought of, or contemplated by either of the parties until about the time this suit was brought. As we understand the law, the reservation of a vendor's lien depends upon the intention of the parties. Tiedeman on real property, section 293, uses this language:

"Since this lien is raised in favor of the vendor on the theory that he is without remedy in a court of law, and the lien is necessary to prevent his incurring the loss of both the land and the purchase money; if the vendor shows by any act that he does not rely upon the vendor's lien for protection, the land will vest in the vendee, discharged of the lien. The reservation of the lien depends upon the intention of the parties."

In the case of *Dudley vs. Dixon*, 14 N. J., Equity, page 253, it is said:

"Any act which indicates that it was not the intention of the parties that the purchase money should continue a lien upon the land is a waiver of such lien. See notes to *Macreath vs. Symmons*, 1 White & Tudor's L. C., in Equity 256."

And it was held in *Cordova vs. Hood*, 17 Wallace 1:

"That there may be either an express, or an implied waiver of a vendor's lien."

And in the note to *Lago vs. Badolet*, 12 Am., Dec. page 263, it is said, in a quotation from Second Washburn on Real Property in reference to a vendor's lien:

"This lien will be defeated if the vendor do any act manifesting an intention to not rely on the land for security."

And in *Manley vs. Slasson*, 21 Vt., 279, it is said:

This lien can only be enforced in a court of equity where all equitable considerations will be open to both parties. The cases will be few, and to entitle plaintiff to redress, he must show a case of manifest equity in proof, and in principle."

See also *Gilman vs. Brown*, 1 Mason, 191–213.

In the light of these authorities, and others of a like character, we submit that the evidence shows that the circumstances of the case do not justify the conclusion that there was any lien reserved. It is manifest from the evidence that no lien was contemplated by either of the parties, and the "equitable consideration on proof and principle" are wholly wanting. A brief review of the evidence must convince the court that this is true.

John Lyle was a wealthy man, a money loaner and not a borrower, a man who the evidence shows was of a benevolent and kindly disposition, a man in whom both the complainants put the utmost confidence, a man they called endearing names, and for whom they, at all proper times, expressed the highest regard and the kindliest feelings. Mr. Lyle loaned these complainants large sums of money for the purpose of relieving their necessities, he saved their home from the hands of the sheriff, furnished them money to pay their numerous creditors, and when the $10,000 mortgage was about to be foreclosed he purchased that and held it without foreclosure, and not only so, but advanced them money, horses and cattle, to enable them to stock and carry on the processes of the farm, upon which complainants resided.

And after it became apparent that the complainants never could redeem the farm, he indulged them a long time as tenants upon an agreed rent, which was never paid. About this time, January, 1881, the amounts of money advanced by Mr. Lyle including rents, amounted to a large sum, more than the value of the farm at the price agreed upon, this all the parties, the evidence shows fully believed. It was then agreed between the parties that the complainants should remove from the farm which they accordingly did. The farm was sold and transferred into the hands of a third person, who went into posession thereof and paid for the same. Not one word was said by anybody up to this time, or any intimation given out, or claimed or hinted, that John Lyle was indebted to these complainants, but all the evidence in the case shows that it was believed upon the part of the complainants as well as the said John Lyle, that they were indebted to him in a very considerable sum of money. More than two years elapsed and not a word was said, the farm had passed out of John Lyle's hands; large improvements had been made, the house had been repaired and repainted, and the fences had been rebuilt and the barns improved by a large outlay of money. (Record page 126.)

It transpired that the bondsmen of Mrs. Shropshire were pressing her on account of her default as administratrix of her former husband's estate. In other words, it transpired that she was a defaulter to a considerable amount, and then, for the first time, we find one of her bondsmen as her attorney, attempting to enforce a vendor's lien on the premises in question. (Record, pages 68, 75, 83, 134, 136.)

The following extracts from the record in this case fully sustains the position which we have taken, to-wit: That the idea of a vendor's lien was an afterthought, was never contemplated by the parties, and was forced upon the consideration of complainants by the exegencies of the situation. The complainants were confronted with the consequences of a defalcation which is a criminal offense in Iowa, or were compelled to submit themselves to the direction of their bondsmen, and were made to assert a claim which clearly was never in the contemplation of either party. We quote the following extracts from the evidence of David Ryan, one of the counsel for complainants and a bondsman for Mrs. Shropshire, in his evidence on page 136 of the record, says:

"Loretta Shropshire, the complainant in this case, is indebted to me or those I represent by reason of her failure to account as administratrix of her husband's estate.

I was one of complainant's bondsmen on the bond given by her as administratrix of her first husband's estate.

Loretta Shropshire in her cross-examination on page 134 of the evidence says:

"I am indebted to David Ryan as one of my bondsmen and for attorney's fees.

David Ryan was one of the surities on my administratrix bond and my bondsmen were adjudged to pay quite a large amount by reason of my failure to account, but they were in no wise interested in this suit."

David Ryan, in his cross-examination in his deposition, which was taken in April, 1885, on page 83 of the record testifies as follows:

"I am the David Ryan who originally brought this suit as attorney for Loretta Shropshire. I am the David Ryan to whom the decree entered by default in this case was assigned. I was not John Lyle's attorney in 1878. I have such an interest in this case as an attorney may honorably have in his client's cause, and the decree in this case was assigned to me in trust for six other gentlemen besides myself who were sureties on the plaintiff's bond as administratrix of the estate of her first husband, on which we had to pay quite a sum of money. This was to be repaid out of this decree. I do not now claim to be the owner of this claim now pending. No other assignment has been made me, except what is of record. I proposed most of the interrogatories on direct examination, at the request of Judge Day, because I was more familiar with the facts than he."

L. Shropshire, in the cross-examination in her deposition, which was taken April 1, 1885, testifies as follows on page 75 of the record:

"I have seen copies of the questions asked me before to-day. They were shown to me by Mr. Ryan. I knew what questions would be asked me to-day on the part of the complainant prior to my examination. D. Ryan has no interest in this suit only for the benefit of my sureties, for whom he is attorney, and he himself is on my administratrix bond. I assigned to him the decree rendered by default, because he was one of my sureties, and to pay him attorney's fees in this case."

A. C. Shropshire in his cross-examination in his deposition taken April 1, 1885, testifies as shown by the record:

"The farm was sold by letter, by correspondence, as shown by my examination-in-chief. This suit was brought because Lyle failed to comply with his contract. David Ryan has no interest, only as far as he was security on certain judgment claims against her, and his attorney fees are to be paid out of it, and the balance goes to complainant, my wife."

No demand was ever made on John Lyle for the payment of any sum due, or alleged to be due, on the purchase price of said land, by complainants, or anyone else. (Record, page 102.) He was not asked to pay the balance alleged to be due, but secretly and by publication, suit was commenced in the State Court, the complainants and their attorney both at the time well knowing the residence of the said Lyle, and his responsibility was unquestioned.

William Lyle, in his deposition taken April 30, 1885, and which will be found on page 91 of the record, testified as follows:

"My name is William Lyle, age 26 years, residence Kewanee, Illinois, occupation farming.

"I have known A. C. Shropshire since he first brought cattle to Kewanee to sell, in 1875. I think he kept his cattle in our pasture and we afterward bought some of them. The first time I saw complainant was in 1879, at her home in Iowa. I have heard both Mrs. Loretta Shropshire and her husband make statements about the payment by Mr. Lyle for the farm in controversy in this suit. I went over from Afton, Iowa, onto this farm in 1881. My grandfather, John Lyle, came the next day, or very soon after, and remained several days. Shropshire's folks were still there. We were all in the house together talking about the place, and A. C. Shropshire said they had agreed upon a price for the place and was to let it go on what they owed grandfather at $40 per acre and he told them he would rather have the money than the place, and he says, 'If you can get any more than $40 per acre for it within a year—can have all over that.' Then A. C. Shropshire says, 'Uncle Johnny, when will I have to move from here?' and he says, "That is between you and Will; I don't suppose he is in a hurry and you can fix it with him.' Shropshire says, 'I would like to move to Newton, but I have no stabling there and I would like to stay till about June and get my cattle ready to sell.' I says, 'There is plenty of house room and plenty of stable room and you can stay just as well as not.' He said otherwise he was ready to move out right off.

"Loretta Shropshire was present during all this talk and heard it all. She has told me time and again that she would rather my grandfather would have the place than any one else; said my grandfather had done more for her than her own father ever did."

In the deposition of Charles K. Ladd, found of record on pages 94 and 95, taken in May, 1885, he states:

"I went there at the request of Mr. Lyle to take steps to get possession of the farm and rent it to other parties, unless complainant and her husband paid up their rent and complied with the terms of the lease which they held from Mr. Lyle, dated March 1, 1879. At that time the complainant and her husband and Mr. Lyle talked over their dealings and made a settlement in which Mr. Lyle agreed to cancel all indebtedness which he held against them upon their compliance with, and carrying out the terms of an agreement then signed by them on the back of their lease, a copy of which agreement appears in connection with Mr. Lyle's deposition in this case. I figured up the account as stated between them. * * *

"Most of these items drew interest, which was figured up, but the exact amount I cannot now state, as the paper on which the calculations were made was not preserved, and I think other items were included which I cannot now give. The item total of principal and interest then admitted to be due Mr. Lyle amounted to over $20,000 exclusive of the rent due, and

I think over $25,000, but Mr. Lyle then stated that if they would pay the rent for the farm according to the agreement as written on the back of the lease they could continue in posession, and whenever they would find a purchaser for the farm he would convey it to such purchaser for the money he had invested in it, and would allow them $1,000 for making the sale, as he had no use for the land and wished to get out of the whole business. I drew the agreement that is written on the back of the lease, a copy of which appears in Mr. Lyle's testimony as Exhibit '7', and after reading it over to all of the parties, who were together in complainant's house, it was signed by complainant and her husband, and Mr. Lyle, the defendant, in my presence."

John Lyle, in his deposition, taken May 5, 1885, and of record of page 99 of the evidence, testified as follows:

"Mrs Loretta Shropshire went with me to Kentucky the second time I went. She did not have money enough to pay her fare all the way, and I let her have $13, which she has not paid. She was along when I bought Black Eagle for her, and wanted me to buy several other stallions. She wanted Black Jewel then, but I kept him till the fall of 1880, I think it was, and then sold him to her for $600, and at the same time I sold her two barrels of vinegar, but did not agree as to the price. * * *

"In January, 1880, after allowing the complainant $40 an acre for the farm, she owed me, upon a careful settlement, if I had charged her for everything, and interest on everything, more than $5,000, without reckoning in any rent; and on the 26th of January, 1880, I went to see them and took C. K. Ladd, my attorney, along, to see if I could not get the money that was due me, or get them to leave the place in time for me to rent it by the first of March, or in time for the season, and when there at the house, Loretta Shropshire, A. C. Shropshire, Ladd and myself, talked it over and made a settlement; and there was then due me $4,500, besides the rent of $1,700 that would be due on March 1, 1880. I did not figure it very closely, and then offered them $1,000 off if they would find any one who would purchase the farm of me for the money I had put into it. I had made them the offer before, and always said to them that they could have $1,000 if they would find anybody to take it off my hands. They, Alex and his wife, both said at that time, that they thought they could find some one to do it before the year was out and could raise the money to pay me all they owed me without throwing off the $1,000, as they had a good deal of money due them for stallions' service, and could raise considerable from a sale of stock. * * *

"I never heard that they claimed that I owed them, or that Rheinhart held the farm in trust for Mrs. Shropshire until this suit was commenced. I bought it the same as I would buy anything, and supposed it was mine. We never had any talk about the deeds being mortgages, and I never supposed they were anything but deeds that gave me title to the land. I always said to them, that they might have all they could sell the farm for above my money I had in it and I would throw off $1,000, and have been ready to do it all the time till they gave it up, for I did't want the place. I had more land than I wanted without it. I had no talk with them in 1881 about buying it, and never at any time agreed to give or allow them more than $40 an acre for it, and was willing to do that, and that was all it was worth. I was offered land adjoining it that was as good for less money. * * *

"Complainant never did in her life demand payment of any additional money upon the purchase price of said farm prior to commencement of this suit. She never did prior to the commencement of this suit make any claim against me for money alleged to be due her from me."

Exhibit No. 13, found on page 114 of the record, is a letter from Mrs. Shropshire to Mr. Lyle:

Glen Farm, Aug. 13, 1879.

"*Uncle John Lyle:*

"I have been to Kentucky, and returned Saturday. I made a compromise with Swope. He seemed to feel real sorry for me and said he would do anything for me he could. I then asked him if he would relieve you, as you were growing old and had a great many cares, and that this was giving you a great deal of trouble, and he said for me to ask you what you would take for your land claim, and you write him (Swope), as he was coming over in Illinois about the 20th and would come and see you about the farm. He said he would pay you two-thirds down, if you would wait on the balance, and, as you have proved yourself such a good friend to us, I want to do what is right, and as you expressed yourself at different times you wished yourself out of this, I took the liberty to ask Swope to help me, and at the same time you. If this does not suit you, of course do as you wish, but I feel like trying to save my home, and if you conclude to let the man who wants to buy it have it, I want you to do as you promised. Is Etta married yet, and how is aunt? Has her touch-me-nots bloomed? Alex is coming over to Cambridge fair. I will close, as Pool is ready to go to Iowa.

"As ever, your friend and well-wisher,

"MRS. ALEXANDER SHROPSHIRE."

In exhibit No. 17, found on page 116 of the record, in a letter to Mr. Lyle, Mr. Shropshire says:

"I know all you want is what is right, and I shall work that way. I am anxious to pay you and can do so by your kindness. You have been the best friend I ever had, and I shall never forget it in days to come. I have made arrangements to save most of my meadows for timothy seed. My corn is looking well. My small grain is doing well. Meadows are thin here in this state, but I think it will turn out a good quantity of seed; if so I will have a nice thing of it."

Exhibit No. 18 is also a letter from Mr. Shropshire to Mr. Lyle, and is found on page 117 of the record, in which he states:

"The Ryan brothers won't give what the farm is worth. I suppose they think you will sell it to them at their own price. I tell them you can hold it as long as the next man for you are not compelled to sell. I am willing to sell whenever we can get enough to pay anything like the value of the farm. I am willing to do all in my power to please you in the matter. I would be pleased to see you at any time you could come out and spend a few days, and see how things are looking, and see for yourself."

Exhibit No. 20, found on page 118 of the record, is another letter to Mr. Lyle from Mr. Shropshire, in which he says:

GLEN FARM, Iowa, Oct. 4, '80.

"*Mr. John Lyle:*

"DEAR SIR: Yours, of the first, inst. was received, stating you had sold the farm at $40 per acre, but no papers drawn yet. You also wish to know what time I could give possession of the farm. I will give possession at any time he can move in —any day. All I want is time to gather my corn crop and fix up what I wish to sell this fall. I would like to keep one of the stables and lot until I can have a sale. He can take possession of the rest of the farm at any time. I want to have a sale and sell what stock I have to sell, also a place to stay until I can thresh my timothy. I can give possession of half of the house any day, and one of the barns."

Joseph G. Long, whose deposition is found on page 126 of the record, states:

"Mr. Shopshire told me at the time I started to Kewanee to rent said farm to John Lyle, that he saw that Mr. Lyle didn't intend to rent us the farm any longer; that he would give possession to me any time I demanded it if I rented it. This conversation occurred on the sidewalk in Monroe, between Dalrymple's hotel and the depot. At the time we were talking the telegraph operator at this station came to us with a dispatch from Mr. John Lyle, from Kewanee, stating in the dispatch that the farm was sold, and that if I would not come and rent it. I handed this dispatch to Mr. Shropshire. He read it and stated to me he saw that Mr. Lyle did not want to rent it to him any more and requested me to go at once and rent it. I stated to him that I wouldn't go to rent the farm from John Lyle unless he would write a letter to John Lyle and send by me to rent the farm to me, and also read the same to me before he sealed it, which he did. So I went and rented the farm, and he gave me possession, as I desired them to do, and he moved away."

This agreement is found on page 78 of the record:

"It is hereby agreed by and between the parties to the within lease that the terms thereof are extended one year from March first next upon the following conditions, to-wit: The rent herein named is to be paid promptly as herein agreed; and further, the said tenants are to pay John Lyle on March first next the sum of fifteen hundred dollars, and on first day of June next the further sum of fifteen hundred dollars, and so on, the first day of September next the further sum of fifteen hundred dollars; and it is hereby expressly agreed that if any of the said payments are not made promptly on the day named, then in that case the within lease shall terminate and the said Lyle shall immediately, at his election, take possession of the within described premises without any notice to said tenants whatever, and retain and hold all crops that may be growing or on said premises; and the said tenants agree to surrender said premises to said Lyle without any legal process whatever, hereby waiving all legal process or notice and agreeing to put said Lyle immediately into possession, as aforesaid.

"Witness our hands and seals this 27th day of January, A. D., 1880.

[SEAL.] "A. C. SHROPSHIRE.
[SEAL.] "LORETTA SHROPSHIRE.
[SEAL.] "JOHN LYLE."

It must be borne in mind that during all this time Ryan Bros. were Mrs. Shropshire's attorneys, one of them, brought this suit, and that if any lien had been contemplated it would certainly have been made known; the fact is, the evidence shows, said lien never was contemplated.

We submit that these facts, which are verified by the evidence in this case, are sufficient to establish beyond a reasonable doubt that there was no intention whatever between the parties at any time to reserve a vendor's lien upon the land, but, on the contrary, it is equally apparent that such was not the intention. The evidence we submit is sufficient to convince the unprejudiced mind that the complainants never heard of such a security as a vendor's lien, until about the time this suit was brought, and they had no occasion to so inquire, because John Lyle was abundantly responsible, and because they believed, as the fact is, that they were indebted all this time to John Lyle and not he to them. The whole scheme was conceived by the mulcted bondsmen, and consummated on account of the necessities of the complainants. We submit that they ought not now to be heard to claim such a lien, in view of their conduct during all the years which have intervened, and under the authorities, and the evidence in the case, their right to a lien should be held to be waived and abandoned, and without force or effect as between the parties to this suit.

More than three years had elapsed after the last item of account before this suit was brought, and more than two years had elapsed after the sale and removal from the property before suit was brought, and during all this time perfect silence was maintained on complainant's part and no demand whatever was made on John Lyle.

In the case of *Conover vs. Warren*, 1 Gilman, 498, 41 Am., Dec. 196–98, it is said, in an action to enforce a vendor's lien:

> "She permitted more than three years to elapse before she made any attempt to assert a lien on the land. This long delay, wholly unaccounted for, furnishes a strong presumption that the lien was considered as waived."

There is no vendor's lien in this case, because it is one entirely different in its nature and character from that wherein liens have been enforced by the courts. It is a case of mortgagee in posession, who is held to account for the value of the land, rather than as purchaser. It is not in any sense a case where one party has voluntarily sold land to another party for an agreed purchase price, and who has brought suit to enforce the lien for the balance remaining unpaid, but it is a case in all respects different from that wherein a vendor's lien has been allowed, in that the defendant was in posession under absolute deeds of conveyance, that he advanced large sums of money to the complainant from time to time and eventually agreeing to complete the transaction between them by accounting for the land at a certain agreed price. There is no element of implied trust or secret lien in the case whatever, and there is no case to be found in the books of like character, where the lien has been enforced.

In the case of *McKeth vs. Simmons*, 15 Veas., 329, Lord Eldon says:

> "The question is not a dry question upon the facts whether a security was taken, but it depends upon the circumstances of each case whether the court is to infer that the lien was intended to be preserved, or that credit was given."

Herman on Mortgages, page 271, says, "That the whole doctrine is based upon the inference of a chancellor as to the intention of the vendor," and we submit in the case at bar that the chancellor cannot find from the facts and evidence in the case that there was any intention upon the part of the vendor to reserve the lien, but on the contrary, the whole course of dealing is to the effect that not only was there no intention to reserve the lien, but that the vendor at the time the vendee agreed to take the land, had really no knowledge or expectation that any money was coming to her. The defendant was a very wealthy man, and known to her to be so, and the whole course of dealing plainly and distinctly shows that there was no intention upon her part to rely upon the vendor's lien. In fact she never dreamed that she had a lien until years afterward, lawyers pursuaded her that she had. The evidence in this case is clearly in support of this view. The whole doctrine of the vendor's lien is contrary to principle in the United States. Our statutes make the record of title evidence, and they go further and provide that when a deed is made the whole of the the interest, right and title of the vendor is presumed to be conveyed. (See Code, Sec. 1930). In this state we submit that in accordance with the decision already cited in 52 Iowa, 694, that there is no vendor's lien whatever, unless the lien is reserved in the deed, when the deed has been made absolute in terms. The doctrine goes further and practically abrogates the statutes of frauds, in that it permits a secret lien to be engrafted upon a deed, or a secret lien to be established without any evidence in writing. The doctrine goes further, and is a fraud upon the rights of creditors, so that in a case where the vendor has an absolute deed to a large tract of land and parties contract with him on the faith of his title, yet all may be defeated by this secret lien. And this is not all. This lien has no existence whatever until it is created by the court, and we submit that contrary to the general policy of the law of this country as it is, and in view of all the considerations named, that courts should be very slow to enforce the lien, and that before it can be enforced the evidence should be clear and unmistakable that the parties intended to reserve the lien, that there was an actual sale upon express terms, clearly alleged, proved and understood, and that it is strictly a case between vendor and purchaser with no intervening rights, and that in short all the requisites of the vendor's lien as recognized by the courts should be present before the lien can be declared.

In the case at bar, we respectfully submit that none of the requisites which are required by law are present. That there is a total absence of any agreement as to the *terms* of payment. None is alleged, none is proved. That there is a total absence of proof of any intent upon the part of the vendor to reserve any lien. That there is even the absence of proof that at the time of the agreement to take the land there was thought to be anything due by either party. That it clearly appears from the evidence that whatever claim there was, was an unliquidated claim, which would require adjudication to determine, not only as to the amount, but as to its very existence. In point of fact, the evidence clearly shows that there was an intention fully understood to give whatever credit there was to John Lyle in person, and not to rely upon the lien upon the land.

The lien, in point of fact as sought to be enforced, is in part for chattel property, a lien for which has never been recognized by any court as being of any validity. *Lupin vs. Marie*, 6 Wendall, 77-82. We maintain that under the statutes of Iowa as amended, and as they now exist, and as they are interpreted by the courts, there can be no claim based upon, and arising out of a deed absolute upon its face, and it is the policy of the laws of this state as well as of the United States to only permit the lien to arise where it is reserved in terms upon a deed absolute, or upon a contract where the intention of the parties to reserve the lien is proved beyond doubt. Nowhere in the evidence does the complainant swear, prove, or attempt to claim, that at the time they made the contract they reserved the lien. They have not attempted to show that any lien was reserved, or thought of at the time the conveyance was made, and we submit that there is no case in the history of the laws of this state, or of the United States, where a lien has been reserved by the courts under such circumstances. The doctrine is not favored by the United States Courts. Herman on Mortgages, page 230 says:

> "It is also said that the lien is recognized in the federal courts, but in no case in the Supreme Court of the United States has this doctrine been recognized, except in cases coming from such states as recognize the lien as a part of their jurisprudence. The doctrine is not received with any favor by that court, and it is only in accordance with the rule that the decisions of the highest court of a state, upon this class of questions, is binding upon the Supreme Court, that it is sustained."

See, also, *Bayley vs. Greenleaf*, 7 Wheaton, 46. Besides this, the enforcement of a vendor's lien would work great and irreparable mischief here. The land is now owned and in the possession of an innocent purchaser, who paid the full value therefor, and who is not before this court, and the sale of the land, with his rights outstanding, would be a sale at a sacrifice. A second sale of the land, on foreclosure of the present owner's rights, subject to the former sale under this decree, would also be a sale of a part of the title only. So, that, this court is powerless to do justice between these parties as the case stands. John Lyle's estate, if it owes anything to these parties, is ample able to pay the same, and a suit at law would enable the parties to recover all that they are entitled to in the case. Besides, the declaration of this lien prolongs the litigation indefinitely. If it should be determined in favor of the complainants, a suit would be brought to foreclose their lien and oust the present owner and occupant, which might result adversely to the complainants. On the other hand, if John Lyle is in debt to these complainants, there is a simple and adequate remedy at law, in that he may be sued at law for the balance due for purchase money, or on account, and in one suit the whole matter be determined and settled.

In leading cases in equity, volume I, page 492, it is said:

> "But a lien of this kind is not an original, specific and absolute charge on the land, but only an equity to resort to upon the failure of the personal estate. The personal estate of the purchaser is the primary fund for the payment of the vendor's claim, and the real estate is liable only secondarily."

Therefore, a bill in equity, to enforce the vendor's lien, must show that the complainant has exhausted his remedy at law against the personal estate, or must aver such facts as show that the complainant cannot have a full, complete and adequate remedy at law. And this, complainant has not done.

Eyler vs. Crabbs, 2 Maryland, 137.
Stevens vs. Hurt, 17 Indiana, 141.
Ford vs. Smith, 1 McA., 592.
Ridgeway vs. Town, 2 Md. Ch., 303.
Hall vs. McCubbin, 6 Gill & J., 107.
Scott vs. Crawford, 12 Indiana, 410.
McCauley vs. Holtz, 7 C. L. J., 476.
Richardson vs. Stillinger, 12 Gill & J., 478.
Buttorf vs. Connor, 1 Blackf., 288.

Russell vs. Todd, 7, Blackf., 239.

Roper vs. McCook, 7 Ala., 319, 324.

Upon the further question of intent in the case of *Gilman vs. Brown*, 1 Mason, 191, Judge Story says:

> "The rule af this implied lien is manifestly founded upon a supposed conformity, with the intention of the parties upon which the law raises an implied contract; and therefore, it is not inflexible, but *ceases to act* where the *circumstances* of the case do not justify such a conclusion." Clearly the *circumstances* of this case *do not justify* the conclusion that an *implied lien was intended by the parties*."

In Leading Cases in Equity, Vol. 1, page 502, it is said:

> "There can be little doubt that this principle, of an implied lien for purchase money, has no just application in a country where every debt may be at once made a lien by a judgment, and where debts generally are a lien on the lands of decedents."

And it may be added where the registry laws amply protect everyone. The author further says:

> "That the courts of those states, which have wholly expelled the doctrine, have exhibited a more accurate appreciation of its nature and purpose, than those which have retained it."

In no point of view whatever does either law or equity favor the enforcement of this lien, and we earnestly submit that there is no equity here that will justify this court in enforcing the lien, neither is there any law which justifies the finding of a lien under the facts as developed in this case. We therefore ask that the court find that the complainants are not entitled to any lien in this case.

IV.

THERE IS A FATAL DEFECT OF PARTIES.

The defendant below objected to this case proceeding, until George Lyle should be made a party to the suit. The evidence shows that he purchased the land of John Lyle and paid full value therefor before this suit was brought; that he went into posession and is still in posession of the same. And we submit under the authorities he was not only a proper but a necessary party to the foreclosure of the vendor's lien. On page 88 of the record, George Lyle testifies as follows:

"George Lyle, age 29 years, reside in Jasper county, Iowa, by occupation a farmer and stockman.

I am acquainted with the complainant and defendant, John Lyle. My deposition has been taken in this case on behalf of the defendant, John Lyle.

I know the situation and location of the 540 acre farm in township seventy-nine, Jasper county, formerly owned by Mrs. Loretta Shropshire, and now the subject of controversy in this suit.

I am now in possession of said land; took possession of it on or about March 2, 1883.

I contracted with John Lyle for the purchase of the said farm about December 1, 1882, in Kewanee, Illinois. The contract was verbal. The contract price was $22,000. I paid it all cash. I traded 640 acres of land in Union county, Iowa, at $30 per acre and $3,800 in cash for it. The first payment of $3,800 was made about December 1, 1882, and the balance was paid and transfer made about the last of December, 1882. I gave no notes for the land.

In *Mallow vs. Hinde*, reported in 12 Wheaton, 193, the question of parties was considered by this court. This case holds in substance that where the court can not make a decree between the parties before it, upon their own rights, which are independent of the rights of those not before it, it will not act. And we submit that in the case at bar the rights of George Lyle imperil the rights of a purchaser, made in pursuance of the foreclosure of the vendor's lien. If he paid full value for the farm before this suit was brought, there can certainly issue no valid title against him by reason of a sale under this foreclosure. He would have a right to contest the purchaser's title. The policy of the law is to make all persons who are known to have any interest in the premises parties, that the title may be as perfect in the purchaser as may be, and thus avoid litigation.

In *Shields vs. Barrow*, 17 Howard, 139, this court says:

"The court here points out three classes of parties to a bill in equity. They are: 1. Formal parties. 2. Parties having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and a good conscience."

And in *Wolfe vs. Lewis*, 19 Howard, 280, this court dismissed a bill because persons interested in the decree were not properly before the court as parties.

And it was held in *Findley vs. Hinde*, 1 Peter, 241, that to a bill for specific performance of a contract to convey land that a vendor is a necessary party, though he has parted with all title and his grantees are parties.

See also *Watson vs. Spence*, 20 Wend., 260.

Judge Story in his work on Equity Jurisprudence, volume 2, section 1526, says:

> "The want of proper parties to a bill is also a good defense in equity, at least, until the new parties are made, or a good reason shown why they are not made. At law, a plea of the like nature is sometimes a good defense in bar, and is sometimes only a matter in abatement. But the plea in equity is of a far more extensive nature than at law; and it often applies, where the objection would not, at law, have the slightest foundation. The direct and immediate parties, having a legal interest, are those only who can be required to be made parties in a suit at law. But courts of equity frequently require all persons, who have remote and future interests or equitable interests only, or who are directly affected by the decree, to be made parties, and they will not, if they are within jurisdiction, and capable of being made parties, proceed to decide the cause without them. Hence, it is, that, in courts of equity, persons having very different and even opposite interests, are often made parties defendant. It is the great object of courts of equity to put an end to litigation; and to settle if possible, in a single suit, the rights of all parties interested or affected by the subject matter in controversy. Hence, the general rule in equity is, that all persons are to be made parties who are either legally

or equitably interested in the subject matter and result of the suit, however numerous they may be, if they are within jurisdiction, and it is in a general sense, practicable to do so."

It has been held that the purchasers of mortgaged premises deriving title subsequently to the date of the mortgage, are necessary parties.

> *Lenox vs. Reed*, 12 Kansas, 288.
> *Merrill vs. Phoenix*, 48 Ala., 91.
> *Goodenow vs. Ewer*, 16 Cal., 460.
> *Boogs vs. Hargrave*, 16 Cal., 562.

And in *Noyes vs. Hall*, 97 U. S., 34, it was held by this court:

"That a purchaser from the mortgagor who had entered into possession under a contract to sell, and who was not made a party to the foreclosure suit, was protected by his possession.'

It is quite apparent that George Lyle's interest is such in this litigation that he should have been heard before this court entered a decree. He might be able to show that complainants are estopped from asserting this lien as against him, by permitting him as they did, to enter into possession, to pay the purchase price and to make large improvements without objection.

In view of these authorities we maintain that this defect of parties is such that no vendor's lien attaches in this case, because the evidence shows that the land in question was sold to George Lyle, in December, before this suit was brought, and that he went into posession of the same, and still remains in posession, that he swore when his evidence was taken by the complainant, that he paid all down for the land in December, that he still remains in possession, and has not been made a party in this case. (Record, page 8.) There is no pretense on the part of the complainants that George Lyle was not the bona fide purchaser, without actual notice for value. That he was the bona fide purchaser without notice for value is abundantly proved by the evidence, and is not contradicted. And it is a well settled principle of the law that a secret trust will not be enforced against an innocent purchaser for value without notice.

As was said in the case of *Edmund vs. Termehr*, 60 Iowa, 92:

> "A good faith purchaser of realty for value, and without notice of an equitable incumberance in favor of a third party, takes it free from such incumbrance."

The complainants here have seen fit with a full knowledge, that George Lyle was the purchaser for value, in possession of the land, to go on without making him a party, and attempt to enforce a vendor's lien. The law does not attempt a vain thing. It must be admitted that as against George Lyle no rights whatever can be established in this suit. That being so, the result of a final decree would be an attempt to sell the premises in question subject to George Lyle's rights, whatever they may be. Under such circumstances the land would not bring its value, because the purchaser could not be assured that his title was good. Consequently the complainants or some one else, would be enabled to bid in the land for a nominal sum, because the title would be defective. This is contrary to the policy of the law, which requires that judicial sales should be free from outstanding titles and that the purchaser should have as good a title as could be made. If George Lyle had been made a party, then this difficulty would not attach. As it is, there is no jurisdiction to enforce the lien.

The decree provides for the sale of the premises. We have maintained, and still maintain, that no lien whatever can attach in this case. We earnestly submit that if the court shall attempt to enforce this lien by a sale, that then it is that the land is sacrificed by piecemeal sales. No one would purchase the land with George Lyle in possession and claiming to be the absolute owner thereof for anything like its real value, and if the land should be sold by judicial sale by order of this court, then the purchaser thereof could not obtain possesion and this court could not enforce its own decree, because it had no jurisdiction over George Lyle, who resides upon the land and whose interests have not been considered. The law does not favor such piecemeal litigation. The complainants were duly warned of this defect, and they should now suffer the consequences of a defect of parties, and of consequent title, which they have persistently refused to correct.

V.

THE ACCOUNT STATED.

The referees report shows that John Lyle purchased liens against the farm, which with interest amounted to		$18,678 13
That he made advances on accounts of stock which amounted to		5,778 80
Making a total of		$24,465 98
He finds also that John Lyle had received from Shropshires	$ 4,894 44	
To which add the purchase price of the farm	21,600 00	
Making a total of	$26,494 44	

Thus making Mr. Lyle's indebtedness, taking the two accounts into consideration as follows:

The Shropshire total account	$26,494 44
Lyle's total account	24,465 93
Leaving a balance due the Shropshires of	$ 2,028 51

The master reaches this conclusion by throwing out of the account of John Lyle the $2,000 Cole note and interest thereon, and one lot of cattle, $400 and other items and by allowing the Shropshires credit for $700 cash and sixty-two head of hogs, $496; a black stallion colt, $500, and a black mare, $300, and other items.

It seems to defendant these claims should not have been allowed complainants, and that others omitted should have been allowed defendant.

As will be seen in the next division of this argument this balance in Shropshire's favor is more than cancelled and a small balance is due Lyle.

The master has augmented this account by deducting from

Lyle's account, the $5,788.80, and most erroneously calls this later sum the individual indebtedness of A. C. Shropshire, and upon this basis the decree was entered.

The most extraordinary thing about this report is, that all the stock sold from the farm, and the money realized, and the proceeds of the farm, were considered by the master when they went to Lyle as the sole property of Mrs. Shropshire, while the stock that was purchased from Lyle or furnished by Lyle, which went onto the farm, and out of which cash and stock was to be realized to pay Lyle were found to be the individual property of, and the purchase price the individual indebtedness of A. C. Shropshire. Under the circumstances this was the most inequitable finding that we ever remember to have met. In fact the referee does not, however, insist that the accounts should be so construed, and therefore states the account in the alternative, and says if the court should find that the individual indebtedness of A. C. Shropshire is to be considered, that the account would stand, with $2,028.51 only as balance due from Lyle.

The complainants have voluntarily submitted this case to the judgment of a court of equity, and should, therefore, be content to abide by the rules of equity. The evidence clearly shows that in the beginning that Mrs. Shropshire and her husband both solicited a loan of $4,250 from John Lyle, and executed a quit claim deed to be treated as a mortgage as security therefor. The evidence also shows that Shropshire and his wife mortgaged the farm for $10,000, and afterward, at the solicitation of the complainants (record pages 85, 87, 109, 110. 111, 97, 114), John Lyle was induced to purchase this mortgage and hold it for the benefit of the Shropshires, which he did. The evidence shows clearly that A. C. Shropshire was in charge of the farm, and that he indulged in the personal pronoun very largely, and referred to "my hay," "my stock," "my corn," "my meadow," "my pastures" (record pages 113, 114, 116–119), and when negotiations were pending for the removal from the farm, he fixed the date and the terms of the removal.

(Record page 118.) That he was in charge of the entire business, and while so in charge negotiated with John Lyle for the common good of himself and his wife, and procured stock from time to time, which was placed upon the farm, for the purpose as was stated time and again, of making money to pay off the indebtedness to Lyle. The entire evidence is full of convincing proof of the fact that John Lyle gave credit, not to A. C. Shropshire, who was not responsible, but to the farm and to Mrs. Shropshire. It is very clear that John Lyle would not have advanced this money, nor furnished this stock to go upon the farm, had he not thoroughly believed that he held the farm as security for every dollar which he advanced. And we submit that it is not right that the $6,000 found by the referee to be due to John Lyle, should be treated as the sole indebtedness of A. C. Shropshire, and that John Lyle's heirs should be cheated out of this large sum of money, when good faith on the part of complainants require that this sum should be treated like the other advances. There can be no question but that John Lyle believed, when he permitted the stock to go upon the farm, that he held the farm, not only as security for the money which he advanced, but also for the stock which he advanced at the same time. The parties treated the transaction in the same light, and at no time does it appear it was ever hinted that there was an individual indebtedness of A. C. Shropshire, and good faith and good conscience require that all the advances made by John Lyle be applied to the purchase price of the farm. Now that the stock furnished by John Lyle, which went upon the farm, and out of which some of the credits claimed on the part of the complainants were actually realized, should be treated as the individual indebtedness of A. C. Shropshire, and that those payments which were realized out of said advances are to be treated as the individual property of Mrs. Shropshire, and a vendor's lien established therefor, is unjust and so contrary to the true principles of equity, that we believe that this court will never sanction the same. We invite the court's attention to the perusal of the evidence in this case, which could not be manufactured for the occasion, and to the evidence of disinterested witnesses, who speak without bias and without hope of reward, much of which has already been quoted, and all of which is shown in the record.

That the so-called account of A. C. Shropshire set forth in the master's report was in fact the joint account and indebtedness of both the complainants, and so intended by all the parties, the course of dealing clearly establishes this; there is no pretense that A. C. Shropshire, aside from his interest in the farm, was able to pay any part of the nearly $6,000 found due, and this all the parties understood. Upon what evidence the referee should have indicated the account as he did, we are at a loss to understand. The advance of the $18,-678.13 by Lyle, on the faith of the farm security, does not seem to be questioned. Why question his further advances? They were made to the same parties and for the same purpose, viz.: to help the Shropshires.

Upon what priciples of equity the master should have concluded that as to the accounts growing out of the farm transactions what went off the farm, belonged to Mrs. Shropshire, and should be credited on the $18,000 advanced, and what went onto the farm should be the individual property of A. C. Shropshire, and should thus become a total loss to John Lyle, no one has ever yet been able to explain.

John Lyle might claim, with much greater plausibility and with infinitely more justice, that the property which went off the farm and the money realized from sales of produce and stock, belonged to A. C. Shropshire, as through all the correspondence, he designates such property as his, and, if his, it clearly should be applied to the payment of his debt due John Lyle. We insist that any distortion of the facts which causes John Lyle to lose $6,000 is unjust, and should not receive the sanction of this court.

The master should have found the true state of the general account between the parties growing out of the advances of Lyle for farm purposes on the one hand, and the payments to

Lyle out of farm products on the other, then struck a balance between the parties. This according to the master's report would leave a balance due Lyle of $884.36 to be added to the other advances of John Lyle, making the net total advances by defendant $19,562.49, which deducted from the purchase price of the farm, $21,600, leaves due the Shropshires $2,028.51. This would be the state of account without attacking the master's report as to the facts and appears from the master's own showing. This is all there was due from Lyle on any just and equitable view; for this, as we have seen they were not entitled to a vendor's lien, because it was clearly contrary to the intention that such should attach.

We most earnestly and vigorously protest against the fraud and wrong perpetrated against John Lyle's heirs by the theory that John Lyle is without remedy as to the nearly $6,000, wrongfully labeled by the master, "A. C. Shropshire's individual indebtedness." We again repeat that in view of all Shropshire's letters and by the course of dealing between the parties fully known to Mrs. Shropshire, that it would be the most glaring violation of justice to permit A. C. Shropshire and his wife to deal with John Lyle for years, get his money and his horses and cattle to the extent of $6,000 and then palm it off as the indebtedness of A. C. Shropshire, and at the same time to sell the property thus realized from Lyle's advances, and call it the property of Mrs. Shropshire. We have no words which are adequate to characterize such conduct, or the equity which thus poses; in the language of Mr. Justice Story.

In *Gilman vs. Brown*, 1 Mason, 192:

> "The lien of a vendor for the purchase money is the *mere creature* of a court of equity, which it moulds and fashions according to its own purposes. It is, in short, a right which has no existence until it is established by the decree of a court in the particular case, and is then made subservient to all the other equities between the parties."

And of the Supreme Court of Vermont, as reported in 21 Vt., 279, where Judge Redfield says:

"This lien can only be enforced in a court of equity, where all equitable considerations will be open to both parties. The cases will be few, and to entitle the plaintiff to redress, he must show a case of manifest equity in proof, and in principle."

We therefore call upon this court, as a court of equity whose judgment has voluntarily been invoked by the complainants, to apply the rules of equity, as thus announced, and in so doing it will be found that the complainants have failed to show a case of "manifest equity in proof, and in principle." If, as Judge Story says, this lien has no existence until established by a decree of court, and is made subservient to all the other equities between the parties, it cannot, under the evidence, be established, and most clearly not upon the shameful proposition that $6,000 of John Lyle's claim shall be sacrificed, contrary to all justice, and contrary, as well, to the clear intention of the parties.

VI.

ITEMS OF ACCOUNT WRONGFULLY ALLOWED OR REJECTED.

There are some items in Shropshire's account that the master wrongfully, as we believe, allowed among others are the following charges:

The black mare	$300
Black stallion colt	500
Interest thereon	130
Total	$930

Mr. Lyle in his evidence, page 101 of record, says:

> "As to the black mare and black stallion, I never bought a horse of any kind of him in the world, but the black mare was bought by Wm. Lyle and was settled for after Shropshire's sale, when I took the sale notes."

Wm. Lyle on page 91–92 of record, says he bought the mare, and the stallion belonged to another person who owed Wm. Lyle. Against this evidence we have A. C. Shropshire's statement and as the burden is on him, the claim is not made out.

The item of 62 hogs	$496
And the item of 8 brood sows	220
Total	$616

Charged in Shropshire's account is denied by Mr. Lyle on page 102 of the record.

Upon this point Wm. Lyle says on page 92 of the record that all the hogs Mr. Lyle got was 43 head at $8 per head. As Mr. John Lyle admits getting the 43 head, we have on the item of $616 a credit of $344 for the hogs actually got, leaving a balance of an overcharge of $272. Here we have two witnesses against one and the claim in not made out.

The item expenses for horse from Kentucky ought not to be allowed, $110.

Wm. Lyle, page 92 of the record, says the horse belonged to Shropshire. Mr. Lyle also denies this item. Here we have two against one and the item ought to be rejected.

The item hay, $64, service of horse $100, expenses to Ft. Dodge $50, in all $214, both Wm. Lyle and John Lyle say were never had, and here again we have two against one. (Record, pages 91, 101).

The master has allowed these items on insufficient evidence and clearly against the weight of the evidence. We have, then, sundry items:

Hay, etc	$	214 00
Two horses, and interest		930 00
Hogs		272 00
For shipping horse		110 00
Making a total of	$	1,526 00

Which should be deducted from the Shropshire's account. There are other items not proven.

The master rejected items in Mr. Lyle's account which he should have allowed:

Expenses of Mr. Lyle to Kentucky	$	200 00
Taxes, (record, 100–121, 122, 123)		397 07
Making a total of	$	597 07

Not allowed which the evidence shows should have been allowed, besides other items appearing in the evidence. We then have:

Improperly credited to Shropshire	$ 1,526 00
Improperly rejected as to Lyle	597 07
Making a total of	$ 2,123 07
Which overcomes the master's balance of	2,028 51
Making a total due Lyle of	$ 94 56

An examination of these facts convinces us that the parties were substantially correct, when they agreed to balance accounts, and it becomes still more apparent why the complainants never made any demand against John Lyle, until forced into doing so by the bondsmen of Mrs. Shropshire. We, therefore, confidently submit that the master was in error, in finding anything due, and that he ought to have found that the parties had properly balanced accounts, and that no cause of action existed against John Lyle, as both Mr. Ladd and Mr. Lyle testify.

VII.

LYLE HELD THE KEY TO THE SITUATION.

One fact is most potent in this case; Lyle was absolutely master of the situation in January, 1881, as he had been at all times previous to that date, and since the spring of 1878. He could have foreclosed his three mortgages which he held on this property and could have bought it in at his own price. And the Shropshires never could have redeemed, for they had no money or means, by which they could have done anything toward redeeming the farm.

Is it reasonable to suppose, under this state of facts, that John Lyle would voluntarily have surrendered this right, and have accepted mortgage deeds as absolute conveyances, and thus relieve A. C. Shropshire and Mrs. Shropshire from all obligations to him on the $6,000, which the master erroneously supposes was done? Nobody has accused John Lyle of being an imbecile in connection with this transaction. His business was under the direction of two skillful attorneys, Mr. Blish and Mr. Ladd, of Kewanee, he was constantly advised of his rights, and it must have been conclusively understood, as both Mr. Ladd and Mr. Lyle say, between the parties, that the entire advances made by John Lyle to the Shropshires, were to be counted as payments on the farm. Any other conclusion would be contrary to the ordinary course of business, and would be doing violence to the ordinary promptings of human nature, which presupposes that every man, when it is within his power, protects his just interests. It must be apparent, then, to the court, that when in 1880 the parties met at the farm, John Lyle, Mr. Ladd, his attorney, and Mr. and Mrs. A. C. Shropshire being present, and when, as is unquestionably true, the lease was endorsed by the writing hereinbefore quoted (record page 111), that it was understood and agreed between the parties, that the farm was to stand as security for all John Lyle's advances. And it must be equally apparent from the course of business, and from the facts in the case, that in January, 1881, it was clearly the intention of all the parties to the transaction, that the price of the farm should stand as security for all of Mr. John Lyle's advances. He was then as before stated, absolute master of the situation, and as a matter of law, and as a matter of fact, had it within his power to thus secure his advances, and when the master finds that he did not do so, and did not so intend, he finds what is not a fact, and he further finds what was most unjust and inequitable as between the parties.

We submit that the situation of the parties, the security held by Lyle, and all the facts and circumstances of the case, incontestibly prove and show, that it was unqualifiedly the intention to which there was no dissenting voice uttered, that John Lyle was holding the purchase price of that farm as security against all advances which he had made, any other supposition is inconsistent with what every man would do under the circumstances who was advised of his rights, and of his opportunities, as John Lyle was.

VIII.

SHROPSHIRE'S CURTESY.

It may be further remarked that as a matter of law Mr. Lyle is entitled to have Mr. Shropshire's alleged indebtenness to him, if any there was, paid out of the purchase price of the farm to the extent of Mr. Shropshire's interest therein. And as a matter of law, that interest, by the contract of sale to Lyle, made as the evidence clearly shows by both of the complainants, said Lyle became entitled to apply said purchase price in payment of all debts due from either or both of the complainants, to the extent of the interest of either, or both therein. If the court should find that certain debts due to Mr. Lyle was the individual indebtedness of A. C. Shropshire, then said Lyle would have the right to have the same paid out of the individual interest of said Shropshire in said farm.

A creditor who buys land of his debtor, may, as a matter of law, we submit, set off his debt against the purchase price. If this be so, as a general proposition, then we claim this is true in the case at bar, because the husband has an interest in the wife's lands which may be sold by him, or sold on execution.

Hence, if he voluntarily sells his interest or joins his wife in a sale, to his or their creditor, the purchaser who is thus a creditor may set off such indebtedness against the purchase price of the land.

Curtesy is abolished in Iowa. Sec. 2440 of Code.

But the estate in lieu is greater (being in fee simple) than the common law right by curtesy.

Moore vs. Kent, 37 Iowa, 20.

Kendall vs. Kendall, 42 Iowa, 464.

An estate of a husband by curtesy may be sold by him, or on execution.

Shorthall vs. Hinclay, 31 Ill., 219.

Long vs. Hitchcock, 99 Ill., 550.

2 Kents Com., 130.
Thompson vs. Green, 4 O. S., 223.
Schermerhorn vs. Muller, 2 Conn., 439.
Foster vs. Marshad, 2 Foster, N. H., 492.
Cawley vs. Porter, 12 Ohio, 79.
Anderson vs. Zydings, 8 Md., 427.
Mattock vs. Stearns, 9 Vt., 326.
Cay vs. Cochran, 24 Miss., 261.
Roberts vs. Whiting, 16 Mass., 186.
Central vs. Copeland, 18 Md., 305.
Plumb vs. Sawyer, 21 Conn., 443.
Clark's Appeal, 79 Pa. St., 376.

IX.

MASTER'S REPORT IN RELATION TO THIS CASE.

This case has been argued for the most part upon the facts disclosed by the master's report. We have not, except in division VI. of the answer, asked the court to reverse the findings of the master as to actual matters of account. It is to the application of the facts of the account as stated, that we have addressed ourselves, and to the law of the case. It is not the ordinary case where the court is asked to go into matters of long account, and reverse the findings of the master thereon. The master has himself disclosed the amounts which for the most part are not controverted, but the conclusions to which he arrives are sought to be reviewed, in so far as he seeks to apply the moneys advanced, we therefore insist that the rule which will be invoked as to the effect to be given to the report of a master, has no application, except as to the single division of the argument devoted to items of account alleged to be wrongfully rejected, or allowed. As to this division, the rule, that the master's report is *prima facie* correct, and the burthen is on the attacking party will apply, but to nothing else.

X.

RESUME.

This case presents several features, which, when considered in the light of all the evidence, it seems to us, must lead the court to inevitably conclude that the bill should be dismissed. The case was brought, originally, without any previous request on the part of the complainants to settle or account, without any intimation or claim upon their part that John Lyle was indebted to them. It was commenced by publication and without any actual notice to the defendant. Years had elapsed after the transactions now inquired into had been completed. John Lyle was nearly eighty years old before suit was commenced.

It is not pretended that any demand was ever made upon him to account, or that he had ever been notified in any way, prior to the commencement of the suit, that there was any claim against him; and it was not until the defalcation of one of the complainants that anything was said or done. The attorney who originally brought the suit was a bondsman of Mrs. Shropshire's, and it appears from the evidence that she was largely in arrears in the settlement of her former husband's estate, and that this suit grew out of the fact is abundantly shown in the record.

It seems incredible that Mrs. Shropshire should have removed from the farm, and allowed the farm to have been re-sold, allowed years to elapse while in the need of money, and become a defaulter, while knowing at the same time that John Lyle was a man of means and abundantly able to pay all he owed, and never have mentioned the fact or made any demand for money, so far as the evidence shows, or in any way make known that any money was due from him.

The master, to whom was referred the matters of account wholly failed to substantiate his findings of fact, by any evidence, upon which to base any reasons for his conclusions. He is the only person so far as the record shows, who has up to this time, passed upon these accounts, and the facts surrounding them. He did this upon the same record which is now submitted to this court. The judge who heard the report, shows by his opinion that he gave no consideration whatever to the facts of the case, and approved the report so far as the accounts are concerned, without any consideration, and contented himself with passing upon certain points of law presented in the case. We therefore have for the consideration of this court, a case triable under the law *de novo*, and actually as a matter of fact *de novo*, because the record shows that it never was really tried by any court. Unless the hearing before the master shall be so dignified.

The master indulged in the most unheard of equities, in that he should have come to the conclusion that where the parties were dealing upon the faith of the security in the hands of John Lyle, that it should suddenly dawn on the master that Lyle waived his rights under the mortgages, which he had in his power to foreclose, and voluntarily consented that $6,000 of his advances should be considered as the debt of a person wholly unable to pay.

It is also apparent, we submit, that there was no intention whatever upon the part of either of the parties to this cause prior to the bringing of this suit, that a vendor's lien should attach. John Lyle was abundantly able, owned lands in Iowa, and other property within reach of an execution, he is the only party to this record and connected with this case, who was always in funds. It is a most extrordinary conclusion to reach, that the parties under these circumstances should have intended that a vendor's lien should be reserved. The conclusion is inevitable that Mrs. Shropshire believed she had no claim, and if she had, would have entirely relied upon John Lyle's personal responsibility.

We maintain that the facts of this case absolutely negative such an intention to rely upon a lien. Besides the parties have seen fit to continue this litigation without the presence of a necessary party, and thus imperil any title which might be made upon any decree of this court, or any foreclosure of their so-called vendor's lien, and thus put the purchaser to the peril and expense of further litigation.

It is equally true that the parties to this litigation conceded in 1880 and 1881, that the price of the farm would, by the moneys advanced, be more than counterbalanced. The funds furnished by John Lyle for the purchase of stock, and the payment of the indebtedness upon the land, were considered equal to its value. We are, therefore, brought to the conclusion, that all the parties concerned fully concurred in the fact that there was nothing whatever due from Mr. Lyle, and allowed one account to offset the other. And this remained the conclusion, until it became necessary to undergo the pains and penalties of a defaulter, or attempt to unearth sufficient money to meet the demands of indignant sureties, who were compelled to respond upon an administrator's bond.

We submit therefore, that neither in law nor in equity, nor in the forum of conscience, are the complainants entitled to the relief which they ask. And we most earnestly insist that upon the facts in this case, as disclosed by the record, this bill should be dismissed.

Respectfully submitted,

A. H. McVEY,
Solicitor for Defendants and Appellants.

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NOV [illegible]
JAMES H. [illegible]

BRIEF IN REPLY FOR APPELLANTS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS, AND HESTER LYLE, SOLE DEVISEE OF JOHN LYLE, DECEASED, APPELLANTS,

VS.

LORETTA SHROPSHIRE AND A. C. SHROPSHIRE, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

A. H. McVEY, Solicitor for Appellants.
C. C. COLE of Counsel.

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of their so-called [illegible] defenses, and thus put the purchaser to the proof and expense of [illegible] title thereto."

It is equally apparent that the parties to this litigation conceded in 1881 and 1882 that the price of the farm would, by the moneys advanced, be more than counterbalanced. The funds furnished by John Lyle for the purchase of stock, and the payment of the indebtedness upon the land, were considered equal to its value. We are, therefore, brought to the conclusion that all the parties concerned fully acquiesced in the fact that there was nothing whatever due from Mr. Lyle, and allowed one account to offset the other. And this remained the conclusion until it became necessary to undergo the pains and penalties of a defaulter, or attempt to obtain sufficient money to meet the demands of indignant sureties, who were compelled to respond upon an administrator's bond.

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A. H. McVEY,

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54

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Sole devisee of John Lyle, deceased,
APPELLANTS,
vs.
LORETTA SHROPSHIRE
and
A. C. SHROPSHIRE,
APPELLEES.

BRIEF IN REPLY FOR APPELLANTS.

I.

CASE RESTATED.

The argument of counsel for appellee has taken so peculiar a turn, that it may be important to inquire again, what is this case.

Early in 1878 Jehu Rheinhart purchased the farm in question at Sheriff's sale, and in March of the same year John Lyle advanced $4,250 to redeem said land and pay off other indebtedness of the plaintiff, and in 1879 purchased a $10,000 mortgage upon said land, and held it for the benefit of the plaintiff. Jehu Rheinhart in 1878 made a quit claim deed to John Lyle, as did also the complainants. These quit claim deeds were held as security for advances made and to be made by John Lyle. These quit claim deeds were intended at the time as securities for moneys advanced and to be advanced by the defendant, Lyle, and were treated as mortgages or securities until the first day of January, 1881, when by the undisputed testimony of the parties the lands were purchased by John Lyle at forty dollars per acre. The parties then and thereafter treated these deeds not as mortgages, but as absolute conveyances. Much dealing in chattle property also occurred between the parties, beginning with the spring of 1878, all of which is involved in this case.

This suit was brought, not to foreclose these quit claim deeds or mortgages, but was brought to enforce a vendor's lien, so called, and for a balance on account. It is very clear that a mortgagor cannot enforce a foreclosure of his own mortgage. These quit claim deeds, then in the bill, that was filed by the complainant, were therein treated as absolute conveyances. And by the filing of the bill complainants elected to treat these deeds as absolute conveyances, and they can not now be heard to say that on and after January 1st, 1881, they were mortgages. It is, therefore, apparent that from the last named date they were treated by all the parties as absolute conveyances. Jones on Liens, Sec. 1102 says, "The action to enforce the lien is in affirmance of the transfer" citing *Perkins v. Electric Light Co.*, 16 Fed. Rep. 513.

The bill filed in this case so treats them, and this is a suit not to foreclose a mortgage but to enforce a vendor's lien. It is perfectly clear that the person who gave the mortgage is a debtor, and cannot foreclose his own mortgage. We then have a very simple action to foreclose a vendor's lien, together with an effort at accounting between the parties.

II.

THE VENDOR'S LIEN GENERALLY.

As we have already seen the vendor's lien is not favored "to the world," says Chief Justice Marshall, in *Bayly v. Greenleaf*, 7 Wheaton 46, "the vendee appears to hold the estate divested of any trust whatever; and credit is given to him in the confidence that the property is his own in equity as well as law. A vendor relying upon this lien, ought to reduce it to a mortgage, so as to give notice of it to the world. If he does not, he is in some degree accessory to the fraud committed on the public by an act which exhibits the vendee as a complete owner of an estate on which he claims a secret lien. It would seem inconsistent with the principle of equity and with the general spirit of our law, that such a lien should be set up in a court of chancery to the exclusion of bona fide creditors."

In the case at Bar the secret lien is not to the exclusion of creditors, but of a bona fide parchaser without notice, who has equal claims with a creditor to protection.

Justice Gray in *Ahrend v. Odiorne*, 118 Mass. 261, traces the doctrine fróm the English Chancery courts, and the peculiar nature of the English Law. It prevents real estate to being attached by mense process, and except in certain cases limits execution for debt. In conçlusion he decided against adopting the rule in Massachusetts, using the following language: "A doctrine which has never been supposed by the profession to be in force here; which would introduce a new exception to the statute of frauds; which, as experience elsewhere has shown, tends to promote uncertainty and litigation; and which appears to us to be unfounded in principle, unsuitable to our condition and usage, and unnecessary to secure the just rights of the parties." And in the courts of the United States the doctrine has never been affirmed except where established by the local law of the different states.

Bayley v. Greenleaf, 7 Wheaton, 46.
McLean v. McLellen, 10 Peters, 625-40.
Chilton v. Bradden, 2 Black, 458.

III.

THE STATUTE AND VENDOR'S LIEN.

It remains, therefore, to be seen what is the status of the doctrine in Iowa.

There was a recognition of a vendor's lien with much hesitation, in the case of *Pierson vs. David*, 1 Iowa, 23. This case arose under the Code of 1850, Sections 2094-2095, which provided that the vendor ot real estate, when all or any part of the purchase money remains unpaid when due, may file his bill requiring the purchaser to perform his contract, or foreclose and sell his interest in the property; and that the vendee in such case for the purpose of foreclosure shall be treated as a mortgagor of the property purchased, and his rights may be foreclosed in a similar manner. This case has no relation to the present statute enacted in 1873.

The case of *Blair vs. Marsh*, 8 Iowa, 144 cited by complainant was a case which arose under the statute and the vendee, under the terms of the statute, was regarded as a mortgagor. This case has no relation to the present statute.

The case of *Baldwin vs. Thompson*, 15 Iowa, 504, cited by the plaintiff, was a case where the vendee was garnished for the unpaid purchase money, and has no relation to the present case.

In 1860 the legislature adopted the Code called the revision, Sections 3671 and 3672, and are as follows:

> "3671. The vendors of real estate, when all or part of the purchase money remains unpaid after the day fixed for the payment, whether time is or is not the essence of the contract, may file his petition asking the court to require the purchaser to perform his contract or to foreclose and sell his interest in the property.
>
> "3672. The vendee shall in such case, for the purpose of foreclosure, be treated as a mortgagor of the property purchased and his rights may be foreclosed in a similar manner."

It appears from these sections that vendors of real estate could foreclose his lien for unpaid purchase money. It will, however, be observed that this statute is radically different from the Code of 1870.

The case of *McDole vs. Purdy*, 23 Iowa, 277, simply recognizes this feature of the statute and allows a lien thereunder. The case is no authority in the present case.

The case of *Johnson vs. McGrew*, 42 Iowa, 555, cited by complainant, was decided expressly in view of the above statute quoted from the revision. The court there does not undertake to hold that a vendor's lien would arise as an equitable principle, but places it wholly on the ground of the statute of 1860. This case is no authority in the case at bar.

Jordan vs. Wimer, 45 Iowa, 65, cited by complainant, expressly holds that Section 1940 of the Code of 1873, does not apply, and it was therefore decided under the law of 1860; this case is, therefore, not applicable to the case at bar.

The case of *Noyes vs. Kramer*, 54 Iowa, 22, cited by complainants, was a case where there had been a conveyance by the vendor, and the court there holds that section 1940 of the Code does not apply. The Court, page 20, says: "The statute above quoted will not therefore apply to the case and defeat the vendor's lien." This case therefore has no spplication to the case at bar.

The case of *Brown vs. Byam*, 65 Iowa, 374, cited by complainants, also arose under the revision of 1860. Suit was not commenced until June, 1872, and the present Code, and section 1940, were not enacted into a law until 1873. This case can therefore have no application to the case at bar.

The case of *Huff vs. Olmstead*, 67 Iowa, 598, cited by complainants, has no application to the case at bar. It is distinctly stated therein, "that there are no questions of law in this case demanding discussion." The land had been purchased with an agreement to make a mortgage for $1,500 with interest. A mortgage was made extending the time of payment and without interest. This mortgage was not accepted by the vendor. The consideration agreed upon, being another farm, wholly failed, and the Court held on general equitable principles, that the vendor wat entitled to his purchase money in accordance with the agreement to mortgage; this case throws no light upon the discussion on the case at bar.

The case of *Devin vs. Eagleston*, 79 Iowa, 269, cited by complainants, is a case where the vendee agreed to execute a mortgage for the residue of the purchase money. The mortgage was prepared and the conditions arranged and understood, but the vendee failed to sign it. It was therefore treated as an oral mortgage or an equitable mortgage. The Court says, "We are clearly of the opinion as between Devin and Thompson, vendor and vendee, that Devin is entitled to a lien according to the terms of the prepared mortgage, and to which Thompson agreed to execute for the unpaid purchase money." Section 1940 of the present Code was not invoked in this case, or even considered, and it is therefore clear that the case has no application to the case at bar.

These are all the cases cited by the complainant, from the Supreme Court of Iowa, on the subject of vendor's lien.

SECTION 1940.

It will be seen from the foregoing cases cited by the complainant that no light whatever is thrown upon Section 1940. In 1866 the case of *Porter vs. City of Dubuque*, 20 Iowa, 440, was decided. This is a case which thoroughly considered the question of a vendor's lien. In the opinion on page 443 the Court uses the following language:

> "The doctrine of vendor's lien had its origin long prior to the system of registration and the constructive notice resulting therefrom. And it is said by the learned editors of Leading Cases in Equity, (vol. I, p. 375), that "there can be little doubt that this principle of an implied lien for purchase money has no just application in a country where every debt may at once be made a lien by a judgment, and where debts generally are a lien on the lands of a decedent.' And in view of the fact that some of our American States have adopted, while others have rejected, the doctrine, the same learned editors remark: "That the courts of those States which have wholly expelled the doctrine, have exhibited a more accurate appreciation of its nature and purpose than those which have retained it."

Whether the doctrine shall obtain in this State, has not been directly determined by an adjudication involving the question of vendor's lien independent of the express lien resulting from the title bond or otherwise. The following cases are cited as containing some reference to the doctrine, and a recognition of it to a limited or certain extent.

Pierson v. David, 1 Iowa, 23.
Crow, McCreary & Co. v, Vance, 4 Id. 434.
Blair & Co. v. Marsh, et al., 8 Id. 144.
Rakestraw v. Hamilton, 14 Id. 147.
Baldwin v. Thompson, 15 Id. 504.
Kephart v Butcher, 17 Id. 240.

It may therefore be regarded as still, to a great extent at least, an open question; and it is one which we are not required to settle, in order to determine this case.

Soon after the legislature of Iowa appointed a commission to revise the statutes of Iowa. This commission prepared the present Code, known as the Code of 1873, in which Section 1940 was for the first time enacted. The commission in referring to this section of the Code as proposed by them say:

"The so-called vendor's lien owes its existence to peculiarities of the English law of real estate which have never been adopted by us; and it not only lacks any reason for its perpetuation, but is directly at variance with the whole spirit and interest of our system of land records. On these grounds it has been refused recognition by some American courts, even without legislation interposition, and although it has been sustained in Iowa ever since the important case of *Pierson v. David* 1 Iowa, 23, yet the objections to it have been strongly stated in the recent case of *Porter v. City of Dubuque*, 20 Iowa, 440. Most of the Iowa cases usually cited to sustain it are not authorities for the vendor's lien in the proper sense of the word, but only for the right which a vendor has to enforce payment after he has delivered possession but before conveyance. With this latter right we of course do not propose to interfere. The amendment suggested only cuts off the secret lien, after an absolute conveyance enforced in equity. The language of the court in *Porter v. City of Dubuque* certainly throws enough doubt over the doctrine to call for the interposition of the legislature to settle the question one way or the other, and we think there can not be much hesitation in which way this should be."

Thereupon was enacted Section 1940, which is as follows:

" No vendor's lien for unpaid purchase money shall be recognized or enforced in any court or law or equity after a conveyance by the vendee, unless such lien is reserved by conveyance mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee, is made after suit brought by the vendor, his executor, or assigns to enforce such lien. But nothing herein shall be construed to deprive the vendor of any remedy now existing against conveyances procured through fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud." The case at bar arose under this section.

It will be observed that this section has two clauses or provisions, the first clause is absolute in its terms and provides that no vendor's lien shall be recognized or enforced after a conveyance by a vendee, unless the lien is reserved in the instrument, which must be duly acknowledged and recorded. In the case of *Rotch vs. Hussey*, 52 Iowa, 694, it was expressly ruled when construing this statute that after the execution of the deed that the vendor had no lien, because it was not reserved in the deed.

"In the case of *Prouty vs. Clark*, 73 Iowa, 55, it was ruled as follows: "Section 1940 of the Code in effect provides that a vendor's lien, existing only in parol, is not an equity in the land after it has been conveyed; and it is immaterial whether the vendee had notice of the lien or not. The policy of the statute is that the vendor's lien existing in parol, ceases to have any validity after conveyance." Citing

Rotch vs. Hussey, 52 Iowa, 694.

In *Cutler vs. Ammon*, 65 Iowa, 283, the supreme court of Iowa, says:

" It is said, however, that a contrary rule should be sustained as arising by implication from section 1940 of the Code. That section provides that no 'vendor's' lien for unpaid purchase money shall be recognized or enforced in any court of law or equity, after coneyance by the vendee unless such lien is reserved by conveyance, mortgage or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee is made after suit brought by the vendor, his executor or assignees, to enforce the lien." The plaintiff's position is that the statute implies that, in the absence of a conveyance, as in this case, the vendor's lien shall be recognized and enforced, and that nothing short of a conveyance should be held even to impair the vendor's right. But in our opinion the plaintiff's position cannot be sustained. The object of the statute appears to be to provide that a grantee of the debtor shall take the land divested of the vendor's lien, even though he takes with knowledge that the purchase money remains unpaid. Where a lien is not expressly reserved in writing, grantee of the debtor has, under the statute a right to assume that a vendor's lien, as against such grantee was waived."

Citing the case of *Porter vs. City of Dubuque*, 20 Iowa, 442, above quoted approvingly, the case also says that nothing shall over-ride the rights, or take priority of the rights of third persons who have been kept ignorant of such vendor's lien.

The Court also qnotes from the case of *Gilman vs. Brown*, 1 Mason using the following language:

"On principle, however, and when considered in connection with the universal system of registry, it seems to him clear that subsequent judgment liens are entitled to precedent."

It would therefore seem that the Supreme Court of Iowa has construed this section to mean that where there has been a conveyance, there can be no vendor's lien, unless it was reserved in the original deed, which was not done in the case at bar, and no lien ever attached.

The second part of the section is somewhat peculiar, and whether it should be read in a cumulatave sense—that is to say, whether it should be construed to mean that before there can be any vendor's lien established—it must not only be reserved in the deed, but if it is reserved in the deed it will be defeated, if suit is not brought before conveyance, or read disjunctively may be well to consider. It is a well recognized construction that the word "or," is frequently construed as, and made to read, "and."

See *United States vs. Fisk*, 3 Wallace, 444.
Dumont vs. United States, 98 U. S., 143.

In the *State v. Brandt*, 41 Iowa, 593, it was held by the Supreme Court of Iowa, that when necessary to harmonize the provisions of the statute, or give effect to all its provisions, the word "or" may be read as the word "and" and the word "and" read as the world "or." Citing numerous authorities. If we therefore read the statute conjunctively it provides that no vendor's lien shall be recognized or enforced after a conveyance unless the lien is reserved in the deed ; and also unless said conveyance is made after suit, brought by the vendor. In other words, he most both reserve the lien in the deed, and bring a suit to enforce the lien before a conveyance, this seems to be the meaning of the statute.

If it is read disjunctively, it may mean that in case where the lien is not reserved in the deed, a lien may be enforced, where the vendee conveys after suit is brought.

In the case of *Noyes v. Kramer*, 54 Iowa, 24 the court says " It was doubtless the intention of the legislature to except from the operation of the section of the Code above quoted (Sec. 1940) the liens of vendors of real estate by contract to convey, it has therefore made applicable to vendors by conveyance. Sound reasons might be given for this distinction." This idea is carried out by the report of the commissioners where it is said, that they did not intend to interfere with a lien where there has been no conveyance by the vendee.

The Supreme Court of Nebraska in *Edminister v. Higgins*, 6 Neb. 265, expressly decided that there could be no vendor's lien after conveyance by a vendee, unless it was reserved in the deed. And the same court in *Rhea v. Reynolds*, 12 Neb. 128, held in an elaborate and well considered opinion, that when grantors convey by absolute deed, there is vendor's lien for any portion of the purchase money which remains unpaid.

In construing Section 1940 of the Iowa Code, it seems clear that the first and primary intention was to hold that no vendor's lien could be enforced unless it was reserved in the deed, and if it is reserved in the deed, it will not be acknowledged or enforced unless the conveyance by the vendee is made after suit is brought by the vendor, and the case in 52 Iowa and the other cases cited we submit bear out clearly this construction of the statute.

Jones on Liens in a note to section 1063 says in reference to a lien in Iowa: " Now must be reserved in deed to avail against grantee's conveyance, R. S. 1873, Sec. 1940." This authority thus confirms our view and is in line with *Rotch v.*

Hussey, 52 Iowa, 694. But if the second clause of the statute is to be read disjunctive then we submit that this suit was not brought until after conveyance by the vendee.

We are then brought to the next inquiry as to whether or not a vendor's lien can be enforced in this case with reference to "*after suit brought*. This action was commenced by publication, as will be seen from the evidence. See page 10 of the rceord.

STATE OF IOWA, }
Jasper County. } ss.

I. F. Sherman, being duly sworn, says he is the editor and proprietor of the Iowa State Democrat, a weekly newspaper of general circulation, printed and published in said county, and that the notice hereto attached was published in said newspaper for four successive weeks, to-wit: March 22d and 29th, April 5th and 12th, 1883; and further saith not. I. F. SHERMAN.

George Lyle, as we have seen, by verbal contract purchased this farm December, 1882. The deed by John Lyle and wife conveying this farm to George Lyle was made and the conveyance completed on the first day of March, 1883. A copy of this deed will be found in the record on page 89. The publication of notice of suit was not commenced until the 22nd day of March, 1883, and was not completed until the 12th day of April, 1883. Upon the subject of commencing an action by publication the statutes of Iowa provide as follows:

Code Section 2619. "The publication must be made by publishing the notice required in section two thousand, five hundred and ninety-nine of this chapter (§3804), four consecutive weeks in some newspaper printed in the county where the petition is filed, and if there be none printed in such county, then in such paper printed at the next nearest county of this state, which paper shall in either case be determined by the plaintiff or his attorney.

2620. When the foregoing provisions have been complied with, the defendent so notified shall be required to appear as if personally served within the county in which the petition is filed, on the day of the last publication. Proof thereof being made by the affidavit of the publisher, or his foreman, and filed before default is taken."

The manner of commencing actions is fixed by the statute as follows:

"Code 2599. Actions in a court of record shall be commenced by serving the defendant with a notice signed by the plaintiff or his attorney, informing the defendant of the name of the plaintiff, and that on or before a date therein named, a petition will be filed in the office of the clerk of the court wherein suit is brought, naming it, and stating in general terms the cause or causes of the action, and if the action is for money, the amount thereof, and that unless he appears thereto and defends before noon of the second day of the term, at which defendant is required to appear, naming it, or at such other time as may be by rule of court prescribed, default will be entered against him and judgment rendered thereon."

It was held in *Collins vs. Bane*, 34 Iowa, 385, that the action was not commenced until the delivery of the notice to the sheriff although the petition be previously filed. See also

Parkyn vs. Trais, 50 Iowa, 456
Proska vs. McCormick. 56 Iowa, 318.

It has been held that Section 2599 of the Code gives the general rule for determining when an action is to be deemed to have been commenced.

Hintrager vs. Nightengale, 36th Fed. R., 847-850.

It will thus be seen that the Supreme Court of Iowa has construed the statute and has held that suit is not brought until the placing of the notice in hands of the sheriff for service, or in this case until the publication which was March 22, twenty-one days after the deed to George Lyle was made.

This court will follow the Supreme Court of Iowa's construction of the statute.

The effort of the appellee's counsel to take shelter for the protection of their vendor's lien, under two sections of the Iowa Code, is characteristic of the whole argument, and can be best met by calling the attention of the Court to the section of the statute relied upon and the decisions of the Iowa Supreme Court thereunder.

The Code of Iowa, Section 1940, is as follows: "No vendor's lien for unpaid purchase money shall be recognized or enforced

> in any court of law or equity after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee, *is made after suit brought by the vendor*, his executors or assigns, to enforce such lien. But nothing herein shall be construed to deprive a vendor of any remedy now existing against conveyances procured through fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud."

Now, there is no dispute but that in this case there was a conveyance by Shropshire's vendee, John Lyle, the appellant, to George Lyle, before any suit was *brought*, to-wit: March 1, 1883. But the appellee's counsel claim that there was at the time of the conveyance by John Lyle to George Lyle, a *lis pendens*, for that under the Iowa Code, known as Section 2628, it is provided as follows:

> "When a petition has been filed affecting real estate, the action is pending so as to change third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title, if the real property affected be situated in the county where the petition is filed."

The effect of a *lis pendens*, is simply to give constructive notice to any purchaser of the title, after such suit, or after the filing of the petition therein. This constructive notice is relied upon to defeat George Lyle's title, and to protect the vendor's lien of complainant. The claim of constructive notice does not change the fact that the complainant's vendee had made the conveyance to George Lyle. The only question is whether that constructive notice would preserve the complainant's vendor's lien. If *actual* notice would not protect and preserve the vendor's lien, then *a fortiori*, a *constructive* notice, would not. And it was held by the Supreme Court of Iowa, in *Rotch vs. Hussey*, 52 Iowa, 694:

> "A vendor of land, since Section 1940 of the Code was in force, who does not reserve a lien for purchase money unpaid, by conveyance or other recorded instrument, is not entitled to a lien after a conveyance by his vendee, *although the purchaser had notice* of his claim."

It is clear therefore, beyond question, that a *lis pendens*, either in equity or under the Iowa Statute which operates only as *constructive notice* to the vendee, cannot preserve the right of a vendor's lien since *actual notice* could not preserve it. The words of the statute, "after suit brought," have a very different meaning from the words, "*lis pendens*," used in Code Section 2628. The Supreme Court of Iowa have construed these words also, and expressly held in *Collins vs. Bane*, 34 Iowa, 385, that the suit was not brought nor the action commenced until "the delivery of the original notice to the sheriff, and not from the filing of the petition." See also *Reed vs. Chubb*, 9 Iowa, 178.

It is clear therefore, under the Statute of Iowa, and the repeated and continuous construction thereof by the Supreme Court of Iowa, that the vendee, John Lyle, had conveyed the property whereon the lien is sought, before any suit was brought to enforce such lien. This single fact, under Code 1940, defeats the right to a vendor's lien. The statute in respect of *lis pendens*, cannot relieve the complainant from the effect of this conveyance by John Lyle, because the question is not one of notice but one of fact. The suit was not brought until after the conveyance, and whether there was such a filing of the petition as to create a *lis pendens*, is a matter of no consequence, since a *lis pendens* would not affect the fact of the conveyance, but would only constitute a possible constructive notice. But we insist, most strenuously, that there was no such filing of the petition in the case, under the Iowa Statute, as to create even a *lis pendens*; but since that question is immaterial in this case, we do not discuss it.

Counsel for appellees in a "further brief," refer to the case of *Elliott vs. Stevens*, 10 Iowa, 14, and *Froska vs. McCormack*, 56 Iowa, 318, as in some manner relieving them from the fatal consequence to their vendor's lien, by reason of the fact of the conveyance of the property being made by John Lyle to George Lyle before suit was brought. But these cases do not relieve appellees at all, but rather show that in the case at bar the suit was not brought until actual service of notice or appearance. In our

The Circuit Court of the United States Southern District of Iowa, in the case of *Chrisman vs. Hay*, 43 Fed. Rep., 552, decided in 1890, construed the Iowa Statute, section 1940, as follows:

"On behalf of the complainants, it is urged thar the premises sought to be subjected to the lien were conveyed by a mere quit-claim deed, and that the party holding under the same cannot assert any right thereunder as against the complainants. It is true that a party holding under a mere quit-claim deed cannot be heard to assert that he is an innocent purchases for value. *Oliver vs. Piatt*, 3 How. 410; *May vs. Le Claire*, 11 Wall, 217. The statute just cited changes the usual rule applied to equitable liens for the unpaid purchase price of property sold. In the absence of a statute, it is held that the vendor's lien affects all the purchasers from the original vendee who had notice of the existence of the lien when they bought the premises; and hence one holding under a quit-claim deed would be held to be charged with notice of the lien. The statute of Iowa declares that, unless reserved in some written recorded instrument, a vendor's lien cannot be enforced after a conveyance of the property. The question of notice is eliminated from the case. The difference in language used in this section and that found in the section in regard to recording instruments affecting real estate, clearly indicates the different rule to be applied in construing the same. The latter declares that 'no instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration, without notice unless recorded,' etc. Under this section an unrecorded instrument is invalid as against a subsequent purchaser for value without notice. Under the former section, a vendor's lien cannot be enforced after a conveyance by the vendee. To sustain the view of complainants the court would be compelled to interpolate the words "To a purchaser for value without notice" after the word "conveyance" found therein and this cannot be done. The statute expressly declares that, unless the lien is reserved in a written recorded instrument, such lien cannot be enforced after a conveyance of the property, unless such conveyance is made after suit for the enforcement of the lien has been brought; and the court cannot, by mere construction, radically change the meaning of the words used in the section. As a quit-claim deed will transfer the title and right actually held by the grantor therein, it is a conveyance within the meaning of the section regulating vendor's liens."

other stock for the purpose of enabling the Shropshires to carry on their business, and while the exact date as to the furnishing of the cattle which amounted to Fourteen Hundred and Twenty ($1,420) Dollars, does not appear, it is very clear from the record, in the case, that these cattle were not furnished by Mr. Lyle until April or May, 1878. All the witnesses say they were furnished in the spring, which in the climate of Iowa, might very well mean May or June. In view of the situation of the parties, as shown by the record, and the extreme impecuniosity of both of the Shropshires, it is hardly to be credited that Mr. Lyle would have furnished the stock in question without any security whatever, and then have gone on, and furnished the Forty-two Hundred and Fifty ($4,250) Dollars on the condition that he should have a deed for the farm. The reasonable construction is that the large amount was first furnished, and thereupon the stock was advanced for the purpose of enabling the Shropshires to carry on the farm. Mr. Lyle tertifies on page 96 of the record:

> "I know the farm. It was a good stock farm. The buildings needed a great deal of repairs and fixing. They said (the Shropshires) if I would furnish the money to buy the farm and some stock to go with some that Shropshire and wife had, all of us could make money out of it." Mrs. Shropshires was at Lyles and taking part in this negotiation. (Record pages 67, 70 quoted below.)

This was before the Forty-two Hundred was advanced, and it seems to have been part of the same negotiation that money should be furnished to stock the farm in connection with the money to lift the liens. It must appear on inspection, of the record that all the transactions between John Lyle and the Shropshires, was upon the faith of the credit lent to the transactions by Mrs. Shropshire and the farm. John Lyle everywhere states in his deposition, that his dealings were with both of the Shropshires, and not with one alone, and the true interpretation of the evidence fully bears him out in this statement.

The $1,000 note was secured by two names, thus showing that Mr. Lyle did not trust A. C. Shropshire alone, and afterwards

Mr. Lyle states that this note was to be paid out of the proceeds of the farm, (Record 147.) As to the begining of these negotiations, the evidence is as follows:

A. C. SHROPSHIRE, testified as follows, page 67 of the record:

"My name is A. C. Shropshire; age 50 years. I reside in Newton, Jasper County, Iowa, and am by occupation stock-breeder, and am the husband of plaintiff, Loretta Shropshire. I was in Kentucky. I received a letter from my wife in February, 1878, asking me to meet her in Kewanee, Illinois, to assist her in borrowing money of John Lyle to pay off some judgments she had against her land. The latter part of February I met her there and we had a talk with Lyle about borrowing money. At that time she thought it would take about $3,500. W. H. Cole was assisting Mr. Lyle and acting for him. The agreement was made providing we would put the deed for the farm in his name; the land at that time, outside of the homestead, was advertised for sale, and I had business in Kentucky, and it was agreed that my wife was to go to Newton, Jasper County, Iowa, and have the sale postponed until Lyle should come and see for himself that there was no other claim against the land; the arrangement was that Lyle was to loan the money to my wife and have the land deeded to him to secure him for the loan of the money. My wife went to Iowa and they sent me a quit claim deed of the homestead that my wife had already signed, for me to sign. I signed it and sent it back to Ryan Bros., at Newton, Iowa; it is the same deed attached by a copy to the petition in this case marked exhibit "B," acknowledged by me March 25th, 1878. * * * *

LORETTA SHROPSHIRE testified as follows, as shown by the record, page 70:

"John Lyle, the defendant, Dr. W. H. Cole, James K. Blish, attorney at Kewanee, Illinois, came over to Newton and in Ryan Bros.' office, in the presence of Ryan Bros., Dr. Cole, James K. Blish, and the defendant and myself, this business was talked over, and in the presence of the above named gentlemen Lyle agreed to loan me sufficient money to pay off the claims against the land, aside from the $10,000.00 mortgage, to the amount of $3,500, and he was to be secured by a quit claim deed to my homestead, and by one from Jehu Rheinhart, for the lands he bought at the sheriff's sale, and that he, Lyle, would take up the $10,000 and give me five years to pay him, and while in Ryan Bros.' office deeds were drawn up and held by Ryan Bros. until the money was sent to said Ryan Bros. My husband was with me at Kewanee, Illinois, and was present when the arrangements and negotiations were had, and Dr. W. H. Cole was present. The lands were sold under execution at sheriff's sale, and my brother, Jehu Reinhart, bought it in February, 1878, and I made arrangements with my brother, the purchaser of the land, that if Lyle would loan me, *me* the money he, my brother, would transfer the deeds to Lyle to secure him, Lyle, for the money loaned."

D. RYAN, testified as follows as shown by the record on page 80 and 81:

"Name is D. Ryan: reside in Newton, Iowa, age 45; attorney at-law and was in 1878, and resided in Newton.

In March or February, 1878, Mrs. Shropshire was the execution defendant in some cases in the Federal court of this district, and her lands described in the petition in this case had been levied upon, except the homestead, to satisfy some or one of the judgments I think it was on the 19th day of February, or about that, in 1878, that the lands were to be sold. Her brother, Alexander Rheinhart was her surety on this judgment, which had been stayed. She endeavored to have the sale postponed till Mr. Lyle as she claimed, could come from Kewanee, Illinois, to Iowa. Her brother Alexander Rheinhart, declined to make arrangement of adjournment or to agree thereto, but insisted on the sale proceeding. * * * * *

"I was then a member of the firm of Ryan Bros., and we were Mrs. Shropshire's attorneys. John Rheinhart bought in the land described in the petition, except the homestead, under this arrangement as I have already stated. Shortly after this time one W. H. Cole, for John Lyle, began corresponding with us. * * *

"About the 20th of March, 1878, the defendent and Dr. Cole and Mr. Ladd came to Newton, Iowa. Mr. Lyle stated at that time that Mr. Cole was a friend of his, and was acting for him and assisting in the business.

"Negotiations commenced at once between Mrs. Shropshire who was then present and Mr. Lyle. Mr. Lyle brought his attorney with him from Illinois, and we represented Mrs. Shropshire. I was present during all the negotiations and participated in them."

D. Ryan's testimony continued:

"These negotiations lasted two or three days at least, and every matter connected with it was talked over fully. * *

"Mr. Lyle left Newton, and to go back to Kewanee, Illinois, and before he left the arrangements were made that he would loan her the money to pay all these judgments and encumbrances, except the Davenport mortgage. * * * * *

"On April 25th, 1878, we received from John Lyle, in two checks or drafts—one for $3500 and the other for $750—the sum of $4,250. This sum we paid out under and in pursuance with the arrangement to John Rheinhart, $1,218.84, and took from him the receipt hereto attached marked exhibit "V" and made a part hereof. We paid to Alexander Rheinhart and took his receipts for $750; the receipt whereof is hereto attached, marked exhibit "X," and made a part hereof. We also paid costs in the Downer & Coffin judgment, $12.55, April 26th; the balance on the Clark County Bank judgment, $509.26, and costs paid in the case of *Cole versus Zollinger*, sheriff, $16.74; and we paid to Galusha A. Parsons, to apply on judgment in the Federal court, $992.16, on May 29th. This was the balance of money in our hands from the $4,250." * * * * * * *

On March 20th, 1878, the Shropshires made a quit-claim deed of the farm to John Lyle (Record page 105,) and on March 28th, 1878, Rheinhart made a quit-claim deed to Lyle of the land in question. (Record, page 104.)

It must be apparent then that the negotiations begun in February ended in March, 1878, and that the cattle and stock were furnished in the spring of 1878, which was after February certain and probably in April, May or June and upon the faith of the farm security.

The master in stating the accounts between the parties, (record 39)—states the same in four different groups First, Loretta Shropshire's individual account. Second, Joint account of A. C. and Loretta Shropshire. Third, A. C. Shropshire's account, and Fourth, payments by Shropshires to Lyle.

The master says, "If the Court shall be of opinion that the individual indebtedness of A. C. Shropshire should also be deducted the account will stand xxxx." The question, therefore, whether this so-called individual account or indebtedness of Shropshire, should be applied in payment for the land and the account of John Lyle, is a matter which is referred to the Court for determination. As bearing upon the just determination of that account, we ask the attention of the Court to the following facts:

First. Both Loretta and A. C. Shropshire were in the joint occupancy of the land and the stock thereon, as well as owners in common, each possessing an equal right in the homestead forty, while Loretta was the owner of the fee, and her husband the owner of a husband's interest in the other land owned by the wife.

Second. They were each alike to be affected by the foreclosure of the mortgage, or by the failure of John Lyle to advance the money to enable them to save that land. Their interests were exactly alike and harmonious, although Loretta, by reason of holding the legal title, may be said to have had a larger, but still a general interest therein with her husband, A. C. Shropshire.

Third. Both Loretta and A. C. Shropshire joined in the request, and in inducing and procuring John Lyle to advance the money to take up the Ten Thousand ($10,000) Dollar mortgage, and also to advance the further sum of Forty-two Hundred and Fifty ($4,250) Dollars, which he did March 28, 1878.

Fourth. Directly after the advancing of the Forty-two Hundred and Fifty ($4,250) Dollars by John Lyle, and in the spring of 1878, John Lyle furnished cattle to the value of Fourteen Hundred and Twenty ($1,420) Dollars, which were taken to and kept upon the place. Directly thereafter he also furnished one horse, "Bourbon" at Six Hundred ($600) Dollars. These three transactions of advancing the Forty-two Hundred and Fifty ($4,250) on March 28, 1878, and the cattle and horse "Bourbon," in the "spring of 1878," were substantially concurrent acts. The cattle and horse went to the farm and were used thereon in common by the parties, Loretta and A. C. Shropshire. All the other items, except the one of A. C. and Gus Shropshire, are for stock taken to, and kept and used upon the farm. We find all through the testimony of A. C. Shropshire, that he denominates everything on the farm as "mine," especially in respect of the grains, grass, seeds, hay, etc., from which, as well as from other facts it appears that the business of said farm was conducted by A. C. Shropshire, although the title and ownership of substantially everything, was in the name of Loretta.

Fifth. There is nothing in the evidence, except the positive testimony of A. C. Shropshire, which is denied by John Lyle, to show that there was any ownership separate and personal to A C. Shropshire, of anything on the farm or about it. The circumstances all go to show, and there is nothing contrary thereto except the testimony of A. C. Shropshire, that John Lyle understood and believed when he furnished the money and the various items of property, that it was in connection with the farm and its business, and that he would be entitled to an account therefor in the settlement or payment for the farm when he made the purchase of it. Any other conclusion does violence to the conceeded facts and circumstances, and stamps John Lyle as wanting in that business capacity which so characterizes all his dealings with the appellants. We submit that when he made the contract for the purchase of the farm, he was induced thereto and did make it and pay what was in fact an exhorbitant price for the purpose of saving to himself his advances made to the farm and the business conducted there, whether in the name of the one or the other, or both of them, and that but for such belief of his right to an allowance therefor, he never would have made the contract of purchase.

We claim therefore that this account against A. C. Shropshire as stated by the Master, should be applied as a credit upon the farm and account presented by the parties against John Lyle.

V.

WHERE ACCOUNTS ARE INVOLVED, NO VENDOR'S LIEN ALLOWED.

It needs no argument to prove in this case that matters of account entered very largely into the transactions between the parties. And while the purchase price of the land was Twenty-one Thousand and Six Hundred ($21600) Dollars, the matters of account considered and allowed by the Master, exclusive of considerable sums disregarded, amount to the respectable sum of Ten Thousand, Six Hundred and Seventy-three, and 24-100 ($10,673.24) Dollars. It not only required a very considerable amount of evidence, but a reference of these accounts to a master in order to determine the amount due the complainants. We submit that it is contrary to all the authorities, and the well recognized principles of equity governing this case that there should be decreed a vendor's lien in a case involving the consideration of divers accounts between the parties. The vendor's lien, when allowed, is always where a clear, well ascertained and undoubted balance is due on account of the purchase price. In this case it cannot be so claimed, because the amount finally determined to be due, was governed very largely by the matters in account between the parties. Therefore it is that a vendor's lien has no office in this case. This question, we submit has been expressly determined by the Supreme Court of Iowa, in the case of *Erickson v. Smith*, 79 Iowa, 374, where the vendor's lien was defeated by the Supreme Court of Iowa, on the ground that the amount of the lien was blended with matters of account. On page 378, Supreme Court uses this language:

> "Under the agreement Erickson sold nothing but real estate to Smith, and that for a definite and fixed price. At the time of the settlement, when the notes in suit were given, taking the whole transaction between the parties into account, except a few items that were ommitted from the settlement, Smith owed Erickson $999.53, which Smith says they agreed to call one thousand dollars. The statement of that settlement, produced by Erickson, shows that it included the five hundred dollars to be paid in cash in thirty days, and the five hundred dollars which he had assumed to Rosenbaum Bros, the one hundred and thirty-one dollars balance due Rosenbaum Bros., and the bank account to Clark of seven hundred dollars.
>
> While it is true that the transactions other than that relating to the real estate included in that settlement, substantially balanced the account between them, leaving the one thousand dollars indebtedness as purchase price of the real estate, it is equally true that in making that settlement the parties did not so treat the item, but embraced all of them in the settlement by which the balance due Erickson was reached, and in consideration of which balance the notes in suit were given. Under these circumstances it is not possible to separate the purchase price of the land remaining unpaid from the other items that enter into the settlement, and say that the notes were given solely in consideration of the bal-

AVERMENTS OF BILL.

Complainants in their amended complaint, page 35 of record, distinctly aver that the amount due on the land cannot be ascertained without an accounting, thus bringing the facts fully within this rule adopted in *Erickson vs. Smith*, 79 Iowa, 374–378.

"Complainants further allege that as ancillary to the principal relief herein sought, and *and as a means to the determination of the amount due complainant, Loretta Shropshire, upon the sale of the lands above described*, it is necessary that an account be taken of the amount due upon the loan of Four Thousand, Two Hundred and Fifty Dollars, and upon the German Savings Bank mortgage, as well as the amount due the complainant, Loretta Shropshire, upon the various items of property and sums of money above named, the determination of which questions, as appears from an inspection of the various items of account, involves the examination of numerous items of account and complicated computations of interest on many items for variant periods of time, which examination, computation, and determination are peculiarly and appropriately within the ordinary jurisdiction of a court of equity and are essential and necessary to an ascertainment of the amount due upon the purchase of the land aforesaid."

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unwritten claim against the land; and *second*, the introduction of such schemes by the parties, and their blending of bargainings in such way as to disable the court from ascertaining and defining with any certainty the present amount in money, or from identifying the charge sought to be enforced." Citing:

Darts Vendor & Purchaser, ch. 14.
Mackreth v. Symmons, and notes, 13 L. C. in Eq. 194.
Campbell v. Campbell, 21 Mich. 438.
Payne v. Avery, Id. 524, 551.
Clark v. Stilson, 36 Mich. 482.
McKillip v. McKilliy, 8 Barb. 552.
Arlin v. Brown, 44 N. H. 102.
McCandlish v. Keen, 13 Gratt, 615.
Buckland v. Pocknell, 13 Sim. 406.
In re Brentwood Brick and Coal Co., 4 Ch. Div. 562, 20 Eng. 758.

dollars. The statement of that settlement, produced by Erickson, shows that it included the five hundred dollars to be paid in cash in thirty days, and the five hundred dollars which he had assumed to Rosenbaum Bros., the one hundred and thirty-one dollars balance due Rosenbaum Bros., and the bank account to Clark of seven hundred dollars.

While it is true that the transactions other than that relating to the real estate included in that settlement, substantially balanced the account between them, leaving the one thousand dollars indebtedness as purchase price of the real estate, it is equally true that in making that settlement the parties did not so treat the item, but embraced all of them in the settlement by which the balance due Erickson was reached, and in consideration of which balance the notes in suit were given. Under these circumstances it is not possible to separate the purchase price of the land remaining unpaid from the other items that enter into the settlement, and say that the notes were given solely in consideration of the balance due on the land. By allowing the items to be thus blended the plaintiff, Erickson, is presumed to have waived his right to a lien and to rely exclusively on the personal responsibility of the vendee."

This case we submit, clearly defeats the lien in the case at bar. In the case quoted from, it said it is not possible to separate the purchase price of the land remaining unpaid from the other items that enter into this settlement. So in the case at bar, it is impossible to separate the purchase price of the land from the questions of account, and no man can determine what the balance of the purchase price is on the land. The whole question involves the consideration of the accounts between the parties. If the question is stated one way, there is so much due on the purchase price. If it is stated another way, there is nothing due. The whole transaction is then so involved with the accounts, as to come clearly within the case quoted, and there can be, therefore no lien. The case cited is a complete vindication of the defendant's claim, and under the law defeats the complainant's lien.

The case of *Hiscock v. Norton*, 42 Mich. 320, declares the same doctrine on this point. The Supreme Court of Michigan says: "And among the circumstances which will have this effect are reckoned, first, the formation of arrangements between the parties, which suffice to make out that reliance was not placed on any unwritten claim against the land; and *second*, the introduction of such schemes by the parties, and their blending of bargainings in such way as to disable the court from ascertaining and defining with any certainty the present amount in money, or from identifying the charge sought to be enforced." Citing:

Darts Vendor & Purchaser, ch. 14.
Mackreth v. Symmons, and notes, 13 L. C. in Eq. 194.
Campbell v. Campbell, 21 Mich. 438.
Payne v. Avery, Id. 524, 551.
Clark v. Stilson, 36 Mich. 482.
McKillip v. McKilliy, 8 Barb. 552.
Arlin v. Brown, 44 N. H. 102.
McCandlish v. Keen, 13 Gratt, 615.
Buckland v. Pocknell, 13 Sim. 406.
In re Brentwood Brick and Coal Co., 4 Ch. Div. 562, 20 Eng. 758.

Jones on Liens, Sec. 1071, says in reference to the vendor's lien : "The lien does not exist as a security for an unliquidated and uncertain demand." Citing :

Hiscock v. Norton, 42 Mich. 320.
Patterson v. Edwards, 28 Miss. 67.
Sears v. Smith 2 Mich. 243.
Pryne v. Avery, 21 Mich. 524.
Harris v. Harris, 37 Ark. 348.

The nature of the transactions then clearly defeat the lien.

GEORGE LYLE A NECESSARY PARTY.

We still maintain that George Lyle was a neceesary party to this action. It is admitted that he purchased the land in question of John Lyle in December, 1882, and paid thereon the sum of nearly $3,800, to this extent his rights must be protected even under the theory of complainant. Record P. 88, 89.

Jones on Liens, section 1077, says :

"A purchaser who has paid part of the consideration before receiving notice of the vendor's lien, is a purchaser to the extent of the consideration paid and is protected to that extent," citing

Mitchell vs. Dawson, 23 W. Va., 86.
Craft vs. Rusell, 67 Ala., 9.
Moore vs. Holcomb, 3 Leigh, 597-608.
Brawley vs. Cattron, 8 Leigh, 522-526.

It will be observed from this authority that George Lyle must be absolutely protected to the extent of his payment previous to the bringing of this suit.

Jones on Liens, Section 1125, uses this language:

"To enforce a lien for purchase money reserved by a vendor's lien in his deed, the same proceedings are had as in a case of formal mortgage. The same persons must be made parties. If the vendee has sold any part or the whole of his interest his grantee must be made a party; and so must any one who has acquired a lien upon the land."

"The rights of the vendee," says Mr. Justice Bradley in *King vs. Young Men's Association*, 1 Wood, 36, "being the same as a mortgagor they must be extinguished the same way." Citing

Gaston vs. White, 46 Mo. 486.
Wells vs Francis, 7 Colo., 396.

Jones on Liens, Section 1101 on the subject of parties in an action to enforce a vendor's lien says: "Subsequent purchasers, mortgagees, and holders of liens in the property should be made parties defendant to the suit." Citing

Carter vs. Alloway, 46 Texas, 108.
Turner vs. Phelps, 46 Texas, 251.
Foster vs. Powers, 64 Texas, 247.

It is clear as we contended in our former brief, that no title can be made to a purchaser, under sale in this proceeding which would effect the rights of George Lyle, or would confer a good title to such property, and there is no excuse for multiplying litigation on account of the omission of an obvious party involving a new the title, and the parties in further litigation, all of which is contrary to the policy of the law.

VI.

THE LIEN MUST REST IN RIGHTFULNESS AND EQUITY.

It will be seen from the decisions of the Supreme Court of Iowa, from the Supreme Court of the United States, and works upon the subject of vendor's liens, that they are not favored, and when the parties bring themselves within the provisions of the statute, and within the decisions of the Courts, still the claim rests in equity, and must always be found to agree with the principles of equity, or it will be denied. In the case of *Allen vs. Loring*, 34 Iowa, 501, the Supreme Court of Iowa says:

> "It is said that the lien of a vendor is not based upon contract; nor is it an equitable mortgage or resulting trust, but a mere equity (see pages 442, 443). It is but a naked equity raised and administered by Courts, and which will be enforced or denied, even between the parties, where no counter equity arises, as the particular case may seem to demand. But it is never allowed to over-ride or take priority of equities or rights of third persons, which have attached in ignorance of such vendor's equity. It is not, in this respect, like a mortgage, or any other lien created by express contract or even by statute. See the cases and authorities cited in *Porter vs the City of Dubuque, supra*."

And in the case of *Erickson vs. Smith,* 79 Iowa, 377, it is said:

"It is a simple equity, raised, and administered by courts of chancery. It is not measured by any fixed rules, nor does it depend upon any particular fact or facts. Every case rests upon its own peculiar circumstances, and the vendor's lien is given or denied according to its rightfulness and equity, in the judgment of the court, upon the facts developed in the particular case. *Porter v. City of Dubuque,* 20 Iowa, 440."

It therefore appears without contradiction, that the vendor's lien will not attach or be allowed to everride or take priority of equities or rights of third persons, which have attached in ignorance of such vendor's equity. It must be remembered that the evidence shows that no lien was really intended as between the complainants and the defendant in this case. That more than two years elapsed after possession was surrendered, and that the deeds were considered absolute two years before this suit was brought. That the suit was brought by publication, and before notice was served, and without any knowledge of the suit, the land was sold and conveyed to Geo. Lyle, who has been in possession ever since. Clearly then, as every case rests upon its own peculiar circumstances, and as it is given or denied according to its rightfulness and equity, it cannot be said that the lien of the complaint is superior in rightfulness and equity, to that of the purchaser in possession. The whole case shows that the vendors's lien was an after thought. That more than two years of delay occurred after surrendering possession. That there is a defect of parties. That complainants have not brought themselves within the terms of the statute. That the land was sold and conveyed away by the vendee "before suit brought." That the accounts are so blendid with the purchase price as to defeat the lien. That the sale was made and possession taken without any actual notice upon the part of the purchaser of the intent to enforce such a lien, and we submit that in view of the law of this case, and the acts of the parties, and the facts as disclosed in the evidence, that the lien should be denied and the bill dismissed.

A. H. McVEY,
SOLICITOR FOR COMPLAINANTS.

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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

TERM NO. 54.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS ESTATE OF JOHN LYLE, ET. AL., RESPONDENTS AND APPELLANTS,

vs.

LORETTA AND A. C. SHROPSHIRE, COMPLAINANTS AND APPELLEES.

APPEAL FROM THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION.

ARGUMENT OF

WILLIAM PHILLIPS,
JAMES G. DAY,
Solicitors for Appellees.

—IN THE—

SUPREME COURT OF THE UNITED STATES.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS ESTATE OF JOHN LYLE, ET. AL., RESPONDENTS AND APPELLANTS,

vs.

LORETTA AND A C. SHROPSHIRE, COMPLAINANTS AND APPELLEES.

APPEAL FROM THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION.

STATEMENT.

Mrs Loretta Shropshire was married to A. C. Shropshire in 1876. At the time of her marriage she owned in her own right about 540 acres of valuable land, in Iowa, which had been set apart to her as her distributive share of the estate of her former husband, Jesse Long. Forty acres of this land, upon which were erected commodious and valuable buildings, constituted the homestead of Mrs Shropshire and her husband. Not long after her marriage she proved to be under very heavy pecuniary embarrassments, and on May 1st, 1877, she borrowed from the German Savings Bank of Davenport, Iowa, $10,000.00, for three years, with interest at the rate of 10 per cent payable semi-annually. To secure this large sum, due May 1st, 1880, she and her husband executed upon all the 540 acres of land above named, including the homestead, a mortgage. Even this large sum proved insufficient to meet all the indebtedness of Mrs. Shropshire Judgments were rendered against her for various sums, and her brother, Alexander Rheinhart, became her surety upon a bond for a stay of execution. The period for which execution was stayed expired, and all of the real estate of Mrs. Shropshire, except her homestead, was advertised for sale, subject to the prior mortgage to the German Savings Bank. A sale made under such circumstances would be without redemption, the Statute of Iowa providing that "in no action where the defendant has stayed execution on the judgment shall he be entitled to redeem"

Code Section 3102, McClain's Annotated Code, Section 4331

In this emergency Mrs. Shropshire, in February, 1878, at Kewanee, Illinois, applied for assistance to John Lyle, an acquaintance and friend of her husband, Alexander Shropshire. It was finally arranged between Mrs. Shropshire and her brothers, Alexander Rheinhart and Jehu Rheinhart that the sheriff's sale should proceed, that Jehu Rheinhart should bid in the property, at the sheriff's sale, and, if Mrs. Shropshire should succeed in raising the amount of the judgment, that he should deed the land to her, or to whomsoever she might direct.

Negotiations were conducted between Mrs. Shropshire and John Lyle, which resulted in his advancing to her $4250.00.

Jehu Rheinhart executed to John Lyle a quit claim deed, dated March 28, 1878, for the five hundred acres of land purchased at sheriff's sale, and Mrs. Shropshire and her husband executed to John Lyle a quit claim deed for the forty acres of land constituting the homestead. Lyle was not satisfied with the quit claim deed from Jehu Rheinhart, and on the 1st day of May, 1878, Mrs. Shropshire and her husband, without any additional consideration, executed to Lyle a quit claim deed, embracing the same lands included in the deed of Jehu Rheinhart.

On the 1st day of May, 1879, Lyle purchased and took an assignment of the German Savings Bank mortgage.

Mrs. Shropshiree and her husband continued in actual possession of all the lands deeded to Lyle, until January 1, 1881, when said property was surrendered to John Lyle; and he and those claiming under him have continued in possession until the present time.

This action was commenced on the 26th day of February, 1883, by filing in the District Court of Jasper County, Iowa, in which said land is situated, a petition to which John Lyle was made sole defendant. On the 1st day of March, 1883, John conveyed the land in question to his grandson, George Lyle, and he took possession on the 2nd day of March, 1883. On the 16th day of Oct., 1883, the cause was removed to the Circuit Court of the United States for the Southern District of Iowa, on the application of John Lyle, upon the ground that he was citizen of the State of Illinois, and the plaintiff was a citizen of State of Iowa. On January 15th, 1886, an amendment to the bill was filed, in which A. C. Shropshire, the husband of Loretta, was made a party complainant. On August 27, 1886, a second amendment to the bill was filed.

The bill, and the amendments thereto, in substance allege that the advancement by John Lyle of $4250.00 was a loan, that the quit claim deeds of Jehu Rheinhart and Mrs. Shropshire and her husband were intended merely as mortgages to secure the amount of the loan; that upon that loan and the German Savings Bank mortgage, held by John Lyle, various payments had been made, aggregating a large sum, that John Lyle, being the holder of said quit claim deed and the German Savings Bank mortgage, bought the lands in question at the price of $42.50 per acre and took possession of the same about the 1st day of January, 1881, and that there was a large amount of the purchase price still due, which defendant had neglected and refused to pay.

The bills prayed that an account be taken of the amount due complainant, that defendant be decreed to pay the balance due upon the purchase price of said land, that a vendor's lien be established therefor against said land, and for general relief.

On the 11th day of November, 1886, an interlocutory decree was entered finding that the deeds from the complainants to the defendants are mortages, and that on or about the 1st day of January, 1881, the defendant John Lyle, agreed to take the lands and pay therefor the sum of $21,600.

This decree also appointed a special master to report the state of the account between the parties. December 14, 1886, the master filed his report, showing a balance due Loretta Shropshire upon purchase price of said land, in the sum of $7807.31, with interest at six per cent. from January 1, 1881. On the 28th day of May, 1887, final decree was entered confirming the master's report, directing the payment of the sum of $10,810.46, with interest at six per cent. from May 28, 1887, and establishing a vendor's lien against all the lands referred to above.

BRIEF.

The advancement by John Lyle to Loretta Shropshire of $4,250 was a loan, and the quit claim deeds of Jehu Rheinhart and Mrs Shropshire to John Lyle have only the effect of mortgages to secure said loan.

Little needs be said in support of the proposition above set out. The evidence upon this branch of the case is abundant and conclusive. W. H. Cole, who was on terms of intimate friendship and business relations with John Lyle, who did all of Mr. Lyle's correspondence with the lawyers and parties at Newton when this business was being transacted, and went to Newton with Mr. Lyle, at his request, and was present when the transaction was consummated, testified as follows:

"I know that John Lyle furnished Mrs. Loretta Shropshire with a considerable amount of money in 1878. The whole transaction was something over $14,000. There was a mortgage on the land of Mrs. Shropshire for $10,000, and there were besides judgments or claims amounting to something over $4,000. John Lyle assumed this mortgage and advanced money to satisfy the judgements or claims. Record, pages 62-63.

"My recollection is that Jehu Rheinhart bid off all the land at execution sale, except Mrs. Shropshire's homestead, and that Rheinhart and his wife and Mrs. Loretta Shropshire made a deed or deeds of the land, which were absolute on their face, to John Lyle, with the understanding, however, that Mrs Shropshire was to have a certain time to pay back the money. Do not remember exactly the length of time." Record, page 63.

"Mr. Lyle wanted, and was to have a deed from them of the whole premises. This deed was, however, to be only as security; that was the talk between them always. It has always been my understanding that Lyle held this land as security for the repayment of his money and the interest upon it, and that the deeds were intended to be mortgages." Record, page 63

Robert Ryan, lawyer, who represented Mrs. Shropshire in the transactions, testified as follows: "In 1878 I received from John Lyle $4,250, as I now recollect it, for the benefit of Loretta Shropshire. The above money was paid under the following circumstances, which show the nature of the security Lyle received therefor: Mrs. Shropshire had been the owner of 540 acres of land, which, with the exception of the homestead, had been sold upon execution sale to Jehu Rheinhart without redemption. Mrs Shropshire and husband made a quit claim deed of the whole 540 acres to John Lyle. Upon this tract was ahead a mortgage of $10,000 to the German Savings Bank of Davenport, Iowa The oral agreement between Lyle and Mrs. Shropshire was that the above quit claim deed should be made, and that thereon Lyle should take care of above mortgages and advance the sum of $4250, for which he should hold the land as security. This sum of $4,250 was to be used to take up the amount paid by Jehu Rheinhart on execution sale, and procure possession from Alexander Rheinhart, who was in possession under claim of a lease, and to pay off other specific items.

"Lyle would not agree to advance the $4,250 unless he could get a quit claim deed from Jehu Rheinhart. When I paid out the money, these requirements were complied with so that as security for the money advanced, Lyle had the quit claim deed of Loretta Shropshire and her husband, and Jehu Rheinhart and wife, and the actual possession of the land turned over to him by Alexander Rheinhart." Record, page 64.

David Ryan, member of the firm of Ryan Bros., who was present during the negotiations, testified as follows: "There was no talk or mention made during the negotiations, that Mr. Lyle was buying the land. It was fully talked that these deeds were taken for the sole purpose of assuring to him the repayment of his money that he was about to advance." Record, page 82.

James K Blish, a witness for respondent, who accompanied him to Newton for the purpose of examining the title to the lands, but who was not present during all the negotiations, and did not give especial attention to the agreement, testified as follows: "Mr. Lyle, the defendant, had been very friendly with A. C. Shropshire while here in Kewanee, and also with complainant after her marriage with A. C. Shropshire, and the object of the business was to have defendant assume the liabilities, take title to the land, and allow complainant and her husband to go on with the business on the farm and pay it up if they could. I do not know that I heard the word purchase or loan used in all the talk between them. Defendant was stepping between complainant and those who were pressing her in order to give her a chance to work out, and as a friendly act." Record, page 124.

Javan Chamberlain, a witness for respondent, testified: "The way I understand it—to the best of my knowledge, John Lyle, the defendant, has stated to me in substance that he had loaned Mrs. Shropshire some money and held the deeds to her lands to secure himself." Record, page 128.

Alexander C. Shropshire testifies as follows: "In the latter part of April, 1878, I returned from Kentucky and stopped at Kewanee, Ill., to see Mr. Lyle He told me he had been to Iowa, and had concluded to to loan my wife the money. He said to me at that time that Alexander Rheinhart had made a claim of $750, claiming that he had a lien on the land. As he was in possession he would not give it up till he had that much money. Lyle also stated that it would take $4250 to free the land of all claims against the land except the mortgage of $10,000 held by the German Savings Bank of Davenport, Iowa He said he had arranged to loan the money and to take the deeds to all the 540 acres of land, instead of mortgages on the said land. He said the land had been sold, outside of the homestead, to Jehu Rheinhart who held the title in trust for my wife, and Jehu Rheinhart and wife, at the direction of my wife, made the deeds to John Lyle. He also said that the agreement was that he held the lands by these deeds as security for the repayment of the money He never claimed at that time that he bought the land, nor did we offer it for sale. He then requested me to have my wife and myself make a quit claim deed for the land outside of the homestead, which we did. There was no consideration for this. We did it at his request, because he thought it would make him more secure." Record, page 66.

Mrs. Loretta Shropshire, amongst many other things clearly showing the transaction to be a loan, testified as follows:

"The deed of myself and husband to John Lyle, March 20, 1878, was made under the circumstances that he was to loan me money, as stated before; we were to give him a quit claim deed to the homestead to secure him. The same is attached to my original petition in this case, marked exhibit "B." The consideration for this deed was the loan of money, and the deed covered our homestead. Lyle was not satisfied with the deed made to him by my brother, and asked us to give him a quit claim deed to doubly secure him for the money advanced. No consideration was paid. I have not the original but a copy thereof is attached to my petiton herein, marked exhibit 'E'. These were made to secure him for the money advanced, and that was the understanding. We resided on these lands at the time, and continued to reside there till June, 1881." Record, page 71.

The testimony of Charles K. Ladd, who was Lyle's attorney and legal adviser most of the time that the transactions were pending, is not really in conflict with that of these witnesses. He did not meet Mrs. Shropshire until January, 1880, almost two years after the ,transaction in question, occurred. Record, page 93. He did not participate in any negotiations between Mrs. Shropshire and John Lyle at Kewanee in the month of February or March, 1878. Record, page 95. He was not at Newton, Iowa, in March, 1878, nor present with complainant and defendant or any other parties concerning any negotiations or business transactions connected with the subject matter of this suit in the year 1878. Record, page 95.

It is therefore evident that he can know nothing of the transactions between Mrs. Shropshire and John Lyle, except as derived from hearsay.

John Lyle is the only witness who testifies that the advancement of $4250 was a purchase of the land, and that the quit claim deeds were made as absolute conveyances. There is much in his evidence inconsistent with this claim and his conduct throughout has been utterly at variance with it.

July 30th, 1879, John Lyle wrote as follows:

"I write to let you know that there will be a man out there by the name of Henry Pritchard, to look at your place. He will be there probably next Monday. He has advertised his place for sale here. I would sell to him if I possibly could. If they take a notion to buy I will come out with them." Record, page 79.

October 13, 1879, Lyle wrote as follows:

"Mr. Sharp says that he thinks the Pritchards will give $42.50 per acre for the farm, and wants you to answer right away whether you will take it or not. If Col. Swope don't pay the money I will have to sell it. I think it would be best for you to sell it at the $42.50 Pritchard was here to see me yesterday, but I was not at home, as I only got back this morning." Record, page 79.

July 19, 1880, Lyle wrote as follows:

"Ryan Bros. have written me asking the lowest price for the farm. I would like to have you go over and tell them what they can get it for. I have written to them saying that you would call on them and let them know. If you can come within $1,000 of trading, I will take it up, same as I offered to last year." Record, page 79

October 7, 1880, Lyle wrote:

"I have not seen the man that was going to buy the farm, but you may consider it a sale, for if he does not take it I will take it myself and put Will on it.

"If you will come here and we can settle I will let you have Black Jewel and take stock for him. If Will comes he will want to buy hogs, hay, and corn. Write and let me know how this would suit you, and when you can be home. As far as staying there, you could stay until February anyway, and if Will comes then you could stay longer." Record, page 77.

So overwhelmingly did this evidence sustain the proposition that the transaction constituted a loan, and the conveyances were mortgages, that no serious question was made over this branch of the case in the Court below, and the interlocutory decree was practically entered by consent. No exception was taken in the court below to that decree. Record, pages 38-39.

II.

After the advancement of the $4,250 and the execution of the quit claim deeds. Lyle purchased the lands in question and agreed to pay therefor at least the sum of $40 per acre, the amount found in the interlocutory decree.

Upon this branch of the case, A. C. Shropshire testified as follows:

"We quit possession in June, 1881, under sale of said lands to John

Lyle. The land was sold to John Lyle Oct. 7, 1880, by letter, and Lyle took possession. In this sale Lyle bought the land at the price of $42.50 per acre." Record, pages 66-67.

Mrs. Loretta Shropshire testified as follows:

"Lyle advised me frequently to sell the land and not be paying so much interest. He said that if I would sell the lands so that he could get his money, he would throw off $1,000 of his claim. I told him if he would send me a buyer I would sell. In the summer of 1879 he, Lyle, then sent a man by the name of Pritchard. We priced the land to him at $45 per acre, and he offered us $42.50 per acre. Lyle then wrote us if we would sell this land that he would throw of $1,000 of his claim." Record, page 71.

"In the fall of 1880 Lyle sent another man whose name I do not remember, and we priced the land to him at $42.50 per acre. He asked what kind of payments we wanted. I told him I wanted what would be coming to me, cash down, and he could fix what would be coming to Lyle with Lyle, and let us know through Lyle whether he would take it or not. We wrote Lyle the man's offer, $42.50 per acre." Record, page 71.

"Sometime after he went home, in Oct. 1880, we received a letter from Lyle saying that he he had not seen the man who was going to buy the land; that we might consider it sold, for if the man did not take it, Lyle would, and put Will on it We accepted this offer and he then wrote us when we could give possession. I can not attach this letter as it is lost. We asked until January 1, till we could get some place to go to. He answered and accepted. The 1st of January, 1881, he came out and took possession, and said he would go and come back, and we would settle. He went away and never did come back. We sold 540 acres at $42 50 per acre, and received nothing in return as yet. Mr. Lyle has not as yet paid the balance due on such sale, after deducting the money advanced." Record, pages 71 and 72.

William Lyle, whose deposition was taken on behalf of the respondent, testified as follows:

"I went over from Afton, Iowa, onto this farm in January, 1891. My grandfather, John Lyle, came the next day, or very soon after, and remained several days. Shropshire's folks were still there. We were all in the house together talking about the place, and A. C. Shropshire said that they had agreed upon a price for the place, and was to let it go on what they owed grandfather at $40 per acre, and he told them he would rather have the money than to have the place, and he says "If you can get any more than $40 an acre for it, within a year, you can have all over that." Record p.—

John Lyle testified: "I had no talk with them in 1881 about buying it, and never at any time agreed to give or allow them more than $40 an acre for it, and was willing to do that, and that was all it was worth." Record, page 91.

See also letter of Oct. 7, 1880, Record 77. This evidence clearly sustains the finding in the interlocutory decree that John Lyle purchased the land and that he agreed to pay therefor at least $40 an acre. No testimony places the price agreed to be paid at less than $40 per acre.

III.

Mrs. Shropshire did not agree that her husband's debts to John Lyle, should be considered as part of the purchase price of the land

John Lyle referring to the transaction at Newton in March, 1878, testified: "I had before that agreed with Mrs. Shropshire to buy the whole farm, and take her deed to the homestead, a copy of which I attach, marked exhibit '3'. She wanted what would amount to $40 per acre for the whole farm, and agreed that all her husband owed me should be reckoned in." Record, page 97.

William Lyle referring to a different time, January, 1881, when possession was taken, testified: "A. C. Shropshire said that they had agreed upon a price for the place, and was to let it go on what they owed grandfather, at $40 per acre." Record, page 91.

This testimony does not imply any agreement that the farm should go in satisfaction of A. C. Shropshire's individual indebtedness. Loretta Shropshire and her husband were both liable upon the $10,000 note to German Savings Bank. (Record, page 108.) With entire consistency, A. C. Shropshire may have said that "they had agreed upon a price for the place, and was to let it go on what they owed grandfather." This statement may have had reference, and if made, doubtless did have reference, solely to the German Savings Bank mortgage.

Mrs. Loretta Shropshire, referring to the evidence of John Lyle, testifies as follows: "He also says that I agreed to take $40 per acre for the whole farm, and that all my husband owed him should be reckoned in. That is not true, for I never agreed to anything of the kind, as we had never had any settlement." Record, page 132.

A. C. Shropshire testifies: "There was never any agreement that any debt I owed John Lyle should be figured in as part of the purchase price of the land involved in this suit." Record, page 150.

An agreement that the individual indebtedness of A. C. Shropshire should be allowed as part of the purchase price of the land, must be established by respondent by a preponderance of testimony. It is clear that this has not been done.

IV.

An agreement of Mrs. Shropshire that her husband's indebtedness to John Lyle should be considered in the purchase price of her land, can be established by written evidence only.

Such an agreement would be one to answer for the debts of another. The Statute of Frauds of the State of Iowa contains the following provisions: "Except where otherwise specially provided, no evidence of the contracts enumerated in the next succeeding section is competent, unless it be in writing and signed by the party charged, or by his lawfully authorized agent." Code, section 3663; McClain's Annotated Code, section 4914.

"Such contracts embrace:

"1. * * * * * * *

"2. * * * * * * *

"3. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debts of their principal from their own estate." Code, section 3664; McClain's Annotated Code, section 4915.

The only other special provision applicable to this question is as follows:

"Nothing in the above provisions shall prevent the party himself, against whom the unwritten contract is sought to be enforced, from being called as a witness by the opposite party, nor his oral testimony from being evidence." Code, section 3667; McClain's Annotated Code, section 4918.

The agreement sought to be established comes squarely within the above provisions of the Code of Iowa. No attempt has been made to establish it by written evidence. Mrs. Shropshire, the party against whom it is sought to be enforced, denies that such agreement was made. It followed that the existence of such agreement, without reference to the preponderance of evidence, has not been legally established.

V.

Aside from a valid agreement to that effect, the lands of Mrs. Shropshire can not be charged with the payment of her husband's debts.

Except to the extent that it may be chargeable with the expenses of the family and the education of the children, the property of a married woman, under the statutes of Iowa, is not chargeable with the debts of her husband. The provisions upon that subject are as follows:

"A married woman may own in her own right, real and personal property acquired by descent, gift or purchase, and manage, sell, convey, and devise the same by will, to the same extent and in the same manner that the husband can property belonging to him." Code section 2202; McClain's Annotated Code, section 3393.

"When property is owned by either the husband or wife, the other has no interest therein which can be made the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as provided in this chapter." Code, section 2203; McClain's Annotated Code, section 3394.

"Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the separate debts of each other; nor are the wages, earnings, or property of either, nor is the rent or income of such property, liable for the separate debts of the other." Code, section 2212; McClain's Annotated Code, section 3403.

"Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried. Code, section 2213; McClain's Annotated Code, section 3404.

"The expenses of the family and the education of the children, are chargeable upon the property of both husband and wife, or of either of them, and in relation thereto they may be sued jointly or separately." Code, section 2214; McClain's Annotated Code, section 3405.

VI.

A. C. Shropshire had no interest in his wife's lands, which were subject to his indebtedness to John Lyle.

It was contended in the court below that A. C. Shropshire, in virtue of his marriage, acquired some interest in the lands of his wife, which became subject to his debts Under the Statutes of Iowa, the husband acquires the same interest in the real estate of the wife, that the wife acquires in the real estate of the husband. Section 2440 of the Code; McClain's Annotated Code, section 3644, provides: "One-third in value of all the legal or equitable estates in real property, possessed by the husband at any time during marriage, which have not been sold on execution or other judicial sale, and to which the wife has made no relinquishment of her right, shall be set apart as her property in fee simple, if she survive him. The same share of the real estate of a deceased wife shall be set apart to the surviving husband All provisions made in this chapter in regard to the widow of deceased husband shall be applicable to the surviving husband of a deceased wife. The estates of dower and courtesy are hereby abolished."

The distributive share, as thus defined, possesses most of the essential characteristics of the estate of dower. It is inchoate merely during the life of the husband or wife, and becomes vested only at death. The interest of a husband in the lands of his wife is contingent and dependent upon his surviving her. This is so by express provision of the Statute One-third in value of the legal or equitable estates possessed by the husband, to which the wife has made no relinquishment of her right, shall be set apart as her property, *if she survive him.* The same share of the real estate of a deceased wife, shall be set apart to the surviving husband.

That the right of a wife to dower during the lifetime of the husband does not possess the elements of an estate in land, nor even of property, is elementary. It is for convenience only that authorities are cited. In Moore vs. Mayor of New York, 8th N. Y. Rep. 113, it is said: "Before assignment of dower the widow has no estate, but a mere right in action, or claim, which cannot be sold on execution. (2 Coms. 254; Greenleaf's Cruise, Dig. Title Dower, Ch. 3, § 1, note Gooch vs. Atkins 14 Mass., 378.)

If this is the true character of the right of the widow prior to the assignment, that of a wife must be a right to a claim for dower, contingent upon her surviving her husband. Such a possibility may be released, but it is not, it is believed, the subject of grant or assignment, nor is it in any sense, an interest in real estate. It is not of itself property, the value of which may be estimated, but an inchoate right, which on the happening of certain events, may be consummated, so as to entitle the widow to demand and receive a freehold estate in the land, if she survive her husband."

See Washburn on Real property, 4th Ed., vol. 1, pages 301 and 302; 5th Ed., vol. 1, page 312.

It is too apparent to warrant discussion, that during the lifetime of a wife, the husband has not any interest in her real estate, which can be subjected to the payment of his debts.

VII.

As to the settlement claimed to have been made on the 27th day of January, 1880.

Respecting this alleged settlement, C. K. Ladd, attorney of John Lyle, testified as follows: "At that time the complainant and her husband and Mr. Lyle talked over their dealings and made a settlement in which Mr. Lyle agreed to cancel all indebtedness which he held against them upon their compliance with and carrying out the terms of an agreement then signed by them on the back of their lease, a copy of which agreement appears in connection with Mr. Lyle's deposition in this case. I figured up the account as stated between them, which was composed of these items." Record, page 94.

The witness then proceeds to state various items of account in favor of John Lyle, which he says, entered into the settlement. He does not state the price at which the farm was figured, and does not give a single item of charge against John Lyle, which was considered. It is very evident that the result which Ladd said was reached in that settlement could have been arrived at only by ignoring every item of credit to which Mrs. Shropshire was entitled on account of payments made to Lyle.

John Lyle, respecting the settlement, testified: "On the 26th day of January, 1880, I went to see them and took C. K. Ladd, my attorney, along, to see if I could not get the money that was due me or get them to leave the place in time for me to rent it by the first of March, or in time for the season, and when there at the house Loretta Shropshire, A. C. Shropshire, Ladd, and myself talked it over, and made a settlement; and there was then due to me $4,500 besides the rent of $1700, that would be due March 1st, 1880. They signed the agreement on the back of the lease at that time and I signed it. I considered after that time that the amount they owed me was only $4,500 besides the rent, and would have been glad to have sold out at that as I had offered for $1,000 less than I paid." Record, pages 99 and 100.

John Lyle is even more indefinite than the witness, Ladd, as to what was considered at the time of this alleged settlement. He furnishes no data whatever, but simply states that a settlement was made, and a certain amount was found due him.

The testimony of the camplainants as to this matter is unequivocal and positive. Mrs. Loretta Shropshire testified as follows: "No settlement was made at the time when a writing was put upon the back of a lease at my house. The lease was given for no other purpose but to protect Lyle against my other creditors and to pay whatever we could of Mr. Lyle's claim. The lease was made in 1880 and dated back. It was never read to me, nor was I in the room when it was written. I was sick at the time. My husband came in with the papers and told me what Lyle had said was the best for me to protect him from my other creditors. There was no accounting or settlement made in my presence or hearing at that or any other time. The lease and writing on the back extending was all made at the same time." Record, page 132.

A. C. Shropshire testified as follows: "There was no settlement at all, and no figures was made at that time. I was afraid that my wife's bondsmen would attach the property that was accumulating on the farm with which we intended to pay Mr. Lyle, and I got Mr. Lyle to come out here and bring Mr. Ladd with him, and Mr. Ladd drew the lease up in my home at that time, and dated it back, and all was done with the purpose of securing Mr. Lyle." Record, page 142.

The lease (Record, page 110) bears date March 1, 1879. It is not very material whether it was executed on that date or at a later time and dated back. It is evident that it was executed for some other purpose than that of creating in fact, the relation of the landlord and tenant. If the lease was really what it purports to be, it was not necessary for Mr. Lyle, accompanied by his attorney, to go all the way from Kewanee to Newton to get them to leave the place in time for him to rent it by the 1st of March, or in time for the season. The lease by its express provisions expired on the 1st day of March, 1880. If it was what it purported to be Mr. Lyle needed no further or other agreement in order to enable him to get possession on the 1st day of March. No more effectual agreement for that purpose could be made, than that which he already had. The very fact that he should have deemed it necessary to procure some other agreement, proves conclusively that the lease was executed for some other purpose than that which is indicated upon its face. If executed for any other purpose. there is no evidence from which it can be found that it was executed for any other purpose than that stated by Mrs. Shropshire and her husband. She was indebted and is still indebted to the sureties upon her bond as administratrix. Record, page 83.

The evidence shows that she had before been resorting to expedients to keep her property beyond the reach of creditors. See testimony of William H. Cole. Record, page 155.

If the lease was originally executed for some other purpose than that of creating the relation of landlord and tenant, it is not unreasonable to conclude that the extension of the lease and indorsement upon the back thereof were made for the same purpose.

At that time Mrs. Shropshire insists that Lyle had only a lien upon the real estate in question, for the payment of what he had advanced. At that time Mrs. Shropshire had not abandoned the idea of paying to Lyle what she owed him, and saving at least an interest in the farm. It was entirely consistent with this purpose that she should want to appropriate the crops grown upon the premises to the reduction of the indebtedness owing to Lyle, for which he had unquestionably a lien upon the premises, and leave her general, unsecured creditors to be negotiated with at a later day.

It may be that the plan adopted was not the best that could have been devised. Mr. Lyle was represented by his attorney, and Mrs.

Shropshire, so far as the evidence shows, was without such representation.

Whatever was done at the conference of January 27th, 1880, it is clear that it did not constitute a full and final settlement of all accounts, and an ascertainment of a balance, based upon an agreed price for the land. The subsequent conduct of the parties is altogether inconsistent with any such position. If the lease and extension were what they purport to be, they would have entitled John Lyle absolutely to the possession, as owner, of the farm on the 1st day of March, 1881. Not only that, but upon the failure to pay any of the installments stipulated to be paid March 1st, June 1st and September 1st, Lyle was authorized to terminate the lease, and take immediate possession.

It is to be borne in mind that John Lyle claims that in the transaction of March, 1878, he bought absolutely from Jehu Rheinhart, 500 acres of the land, and that he bought the remaining 40 acres from Mrs. Shropshire and her husband. He also claims that in the final settlement, January 27, 1880, there was an ascertained balance due him of $4,500, and that an extension was entered upon the lease, entitling him to possession on the 1st day of March, 1881.

Yet, after the alleged settlement, January 27, 1880, we find the parties negotiating for a sale of the farm. On October 4, 1880, A. C. Shropshire wrote John Lyle, as follows: "Yours of the 1st inst. was received, stating you had sold the farm at $40.00 per acre, but no papers drawn yet. You also want to know what time I could give possession of the farm. I will give possession at any time he can move in, any day. All I want is time to gather my corn crop and fix up what I wish to sell this fall. * * *" (Record, page 118.)

On October 7, 1880, John Lyle wrote A. C. Shropshire as follows: "I have not seen the man who was going to buy the farm, but you may consider it a sale, for if he does not take it, I will take it myself, and put Will on it." * * * (Record, page 77.)

Now whatever may be said of negotiations of a sale to a third party, the proposition of John Lyle in Oct., 1880, to take the farm in the contingency of its not being purchased by another party, is entirely and is irreconcilably inconsistent with the claim now advanced, that a settlement was made on the 27th day of January, 1880, at which a balance was ascertained, based upon his ownership of the land, and his present possession of it as landlord. It follows that whatever negotiation occurred on the 27th day of January, 1880, it was not based upon any agreement as to the price of the land, and was therefore no more than a partial settlement, and that the whole matter was entirely set at large by the subsequent dealings of the parties and the purchase by Lyle of the land at the agreed price of $40 per acre.

The finding of the Master in Chancery upon this branch of the case is as follows: "As to the settlement claimed to have been made on the 27th day of January, 1880, I find that it is not shown that any of the payments made by the Shropshires to Lyle were considered nor was the value of the farm taken into the account. It does not appear that Lyle surrendered to the Shropshires any evidence of indebtedness held by him, or that any receipts were given. At most, it seems to have been an attempt of Mr. Lyle to put in more tangible form what he claimed to be due him, but the transaction lacked so many of the elements of a completed settlement that I find none was had." Record, page 43.

It seems to us that this finding is fully supported by the evidence.

No settlement could have been made on the 27th day of January, 1880, as testified by Ladd and Lyle, unless it was based upon an absolute sale of the land in question, by Mrs. Shropshire to John Lyle, at the time the quit claim deeds referred to in the evidence, were executed.

But the existence of an absolute sale at the time of executing the quit claim deeds, is so utterly unsupported by the evidence, that it is inconceivable that any settlement could have been made, based upon the existence of such fact.

VIII,

The amount due Mrs. Shropshire on the purchase price of the land, was correctly found by the Master.

The purchase price of the land was, as we have heretofore shown, $21,600.00.

Against this, John Lyle held:

The German Savings Bank mortgage	$10,000 00
Six installments interest thereon, $500 each	3,000.00
Interest on 1st installment to Jan. 1, 1881, date of purchase of farm, at 6 per cent	79 34
Interest on 2d installment at 6 per cent	65.00
Interest on 3d installment at 10 per cent	83 33
Interest on 4th installment at 10 per cent	58 33
Interest on 5th installment at 10 per cent	33.33
Interest on 6th installment at 10 per cent	8.33
Interest on mortgage from Nov 1, 1880, to Jan. 1, 1881, at 10 per cent	166.66
Total amount due on mortgage	13,494 32
Money advanced by Lyle March 28, 1878	4,250.00
Interest to January 1, 1881	703.37
Taxes of 1878 paid Jan. 26, 1880 (Record, p. 121).	110.25
Interest to January 1, 1881	6.34
Taxes 1880 (See Record, page 122)	122.85
Total	5,192.81
Total, including German Savings Bank mortgage	18,687.13

The payments which we claim Mrs. Shropshire has made on these advancements to her, and the evidence bearing upon them, are as follows:

1. Black mare, $300. Stallion, colt, $500.

A. C. Shropshire testified (Record, page 141):

"I sold a black mare and her stallion colt to John Lyle and they were thoroughbred running stock. I sold them to Lyle April 20, 1878."

John Lyle testified (Record, page 101):

"As to the black mare and black stallion, I never bought a horse of any kind of him in the world, but the black mare was bought by Wm. Lyle and was settled for after Shropshire's sale, when I took the sale notes. It was figured up and settled for in Kewanee, at Mr. Cole's office."

William Lyle testified, (Record, page 91 and 92.):

"The black mare bought in April, 1878, was bought by me for $200.00 instead of $300.00, and this was to be credited on Mr. Lyle's account against Shropshire.

The black stallion next charged in the bill was sucking the mare. The same I bought at the time. Gus Shropshire claimed the colt, and was negotiating with Mr. Lyle for a loan of $5,000, and offered as an inducement that he would make him a present of the colt. Mr. Lyle let him have $1,000, I think, at the tme, and we came home. Afterwards, the abstract of the land that Gus Shropshire was to give as security for the loan was not satisfactory to my grandfather, Mr. Lyle, and he refused to advance the rest of the money, and there the matter stands yet. Gus Shropshire got the $1,000 and grandfather got the black colt."

Mrs. Loretta Shropshire testified, (Record, page 74).:

"In April, 1879, I sold to John Lyle a fine black mare, Kitty, at $300, and black stallion for $500."

This witness further testified (Record, page 133.):

"I have read over Wm. Lyle's deposition in which he claims to have bought the mare and colt. We never sold him any stock as he did not not have anything to buy with, and was living with his grandfather, and his grandfather never allowed him to buy anything."

A. C. Shropshire (Record, page 142) further testified:

"The statement of Will Lyle in his deposition, that I sold him a black mare is not true. He had nothing with which to purchase the mare. He had married against his grandfather's will, and I knew that his grandfather would not advance the money to buy her for Will.—John Lyle bought the mare himself, and the mare and colt was to have been credited on my wife's account. My wife was to be credited for $300 for the mare and $500 for the stallion colt."

This testimony shows very clearly that John Lyle had both the mare and the colt. Wm. Lyle makes no pretense that he ever paid for the mare, and in effect concedes that she was to be paid for by John Lyle. It is not shown that Gus Shropshire had any claim upon the colt, and Wm. Lyle's testimony shows that the condition upon which Gus Shropshire agreed to give the colt to John Lyle, was never performed.

There is nothing unreasonable in the price of the mare and colt, as fixed by Mrs. Shropshire and her husband, for they were pedigreed animals, and considered well bred. (Testimony of W. H. Cole, Record, page 145.)

The testimony of John Lyle (Record, page 101) that:

"It, the mare, was figured up and settled for in Kewanee, at Dr. Cole's office," is contradicted by the testimony of both Loretta and A.

C. Shropshire. A. C. Shropshire, after specifying these two items with others, testified:

"No part of the above has been paid, and the said amounts and each of them is just, true and correct." (Record, page 68.)

Loretta Shropshire also having specified these items and others testified:

"All the above items against the said Lyle are just, true and correct, and the same are wholly unpaid, and would be and are a matter to be adjusted in our settlement." (Record, page 75.)

Whilst it cannot be said that the evidence upon these items is without conflict yet it seems to us that it cannot be questioned that by a fair preponderance it sustains the master's report.

2. Expenses of shipping Black Jewell, and mules from Kentucky, $110 00.

A. C. Shropshire incorporates in his deposition a claim against Lyle for shipping stock from Kentucky and expense $110.00. (Record, p. 63.)

Loretta Shropshire embraces in her deposition two items, as follows: for shipping mules and stallion from Kentucky $90, furnishing men to take care of the same $20. (Record, Page 74.) These items evidently cover the same charge as that of $110.00 in A. C. Shropshire's testimony. Both witnesses testified that these charges are correct.

John Lyle testified (Record, page 101) "He never shipped any stock for me from Kentucky."

A. C. Shropshire further testified (Record, page 144):

"After that he bought a fine stallion and a pair of mules from other parties for himself, and got me to ship them to Kewanee, Ill., for him, which I did under his direction, and I paid $110 for the shipment of this stock to him, which he denies."

This item is supported against the denial of John Lyle, by the testimony of both A. C. and Loretta Shropshire. Upon this branch of the case we insist, the evidence supports the master's report.

3. Cash, March 20, 1879, $300; and September 6, 1879, $400.

Lyle specifically denies the payment of $400 and denies the receipt of any cash from A. C. Shropshire. (Record, page 101.)

A. C. Shropshire testified: "I paid Lyle $400 in Des Moines, Iowa, in the fair grounds, in the presence of Mr. Ed. Wright and Mr. Carper. I paid him the $400 and told him it was the proceeds of the timothy seed money off the farm, and it was to be applied upon my wife's account. This was paid September, 1879.

"I paid Mr. Lyle $300 at Mrs. Dalrymple's Hotel in Monroe, the same year, on the 20th of March, 1879. Mrs. Dalrymple was in the room. She saw the money paid. I do not know whether she understood the conversation or knew the exact amount of the money; and it was applied on my wife's account that she owed him for borrowed money. That was for hay sold off the farm of my wife." (Record, page 141.)

Philip Carper testified: "I was at the fair grounds in Des Moines, Iowa, in September, 1879, and saw Mr. Lyle and Mr. Shropshire in a stall together, and I saw Mr. A. C. Shropshire pay Mr. John Lyle quite a sum of money. I could not say how much." Record, page 139.

Edward Wright testified: "I was at the fair grounds in Des Moines, Iowa, in September, 1879, and in a stall Mr. Shropshire paid Mr. Lyle

$400. Mr. Shropshire asked him if that was right, and Mr. Lyle counted it and said, yes there is just $400. Mr. Lyle says, you must take out $35.00 of what he borrowed of Joe Long." (Record, page 140.)

Mrs. A. L. Dalrymple, testified: "I know that some years ago at our house, in the office, Mr. Shropshire paid Mr. Lyle some money, I do not know how much. I saw the money paid, but could not tell how much it was." (Record, page 137.)

This evidence clearly *establishes these two items.*

4. Paid by Ryan Bros. $18.00, $61.25, $123.42 and $132.80.

David Ryan testified: "I neglected to state that in 1881 we sent to John Lyle, June 24th, $148.55, in May of that year we paid cash $18.00, we paid an order $61.25, and in July we sent him a draft for $132.20. We received this money on accounts turned over by Shropshire to Lyle, and we charged $31.27 collection fees." (Record, page 83.)

David Ryan further testifies: "I have in my possession two returned drafts of money sent to Lyle by Ryan Bros. One dated June 24th, 1880, drawn on the Commercial Bank, Chicago, for $147.98, and on same bank July 10th, 1880, for $132 90. These are amounts named by me in my former deposition, less exchange. I hand the original drafts made payable to John Lyle and endorsed by him, to the notary to be attached to my answer to this interrogatory." (Record, page 136.)

Copies of the drafts appear on pages 136 and 137 of the record.

John Lyle testified as follows: "As to the first item of money received from Ryan Bros. the amount was $148.25 instead of $390.70, and of the amount received $23.85 was for the use of my horse, and the balance on A. C. Shropshire's credit, as shown by Ryan Bros.' letter of June 24th, 1880, attached as exhibit "16" to my answer to the last interrogatory." (Record, page 101.)

The letter of Ryan Bros. referred to, is found at page 115 of the record. It is evident that Mr. Lyle in his testimony had reference only to the one remittance referred to by Ryan Bros. in this letter. The draft enclosed in the letter was for $147.98. (Record, page 136.) John Lyle claims that of this $23.85 was for the use of his horse. The master deducted this amount and allowed on account of this item $123.42, instead of $124.13, the real amount due. A very slight error, but one in favor of appellants. (Record, page 42.) The other items above set out are abundantly sustained by the testimony of David Ryan.

5. Poole and Fuller note, $1,700.00.

C. K. Ladd testified: "I had a note referred to under date of March, 1880, C. J. Poole and Fuller, in complainant's and A. C. Shropshire's bill or account against John Lyle, for collection, and collected it.

The note was dated April 1st, 1880, due two years after date and was for $1,700.00, with ten per cent. interest, and signed by Isaac Fuller and C. J. Poole, and has been paid by part cash and the rest secured by mortgage, and the old note was delivered to Isaac Fuller, of Le Mars, Missouri." (Record, page 95.)

John Lyle testified: "I had the Poole and Fuller note, but it was for $1,700.00, instead of $1,950.00." (Record, page 102.)

6. Expenses to Fort Dodge, $10.50.

This item appears in the deposition of A. C. Shropshire, (Record, page 68.) And he testifies that the charge is just and true. The same charge appears as $10.00 in the deposition of Loretta Shropshire. (Record, page 74.) And she testifies that the charge is just and true. There are many ways in which this small discrepency in amount may have occurred, to which we need not refer. John Lyle concedes that the trip to Ft. Dodge was made, but denies that it was made on his behalf. He testified: "The trip to Fort Dodge that he charges me for was his own business. He went to see about that note he let me have." (Record, page 101.)

Referring to this testimony of Lyle, A. C. Shropshire further testified: "Lyle denies getting me to go to Ft. Dodge to see Mr. Coffin. Coffin owed Lyle about $4,000 in notes, which Lyle purchased of me. Lyle extended the time of payment one year. In the meantime, Coffin became insolvent, and Lyle sent me up there to use my influence to get his claim settled, and was to pay all my expenses." (Record, page 144.)

7. Board of George Washington, $72.00.

This item appears in the deposition of A. C. Shropshire as follows: "Jan., 1881, to boarding Geo. Washington, for defendant, 18 weeks, $72.00." (Record, page 65.)

It appears in the deposition of Loretta Shropshire as follows:

"To boarding Lyle's hired man, 18 weeks, at $4.00 per week, $72.00." (Record, page 75.)

It seems that George Washington was a negro employed as a hand on the farm after Lyle took possession, January 1, 1881. See letter of A. C. Shropshire, of date May 19, 1881. (Record, page 119.)

Referring to this item, defendant testified: "He never boarded any man for me." (Record, page 102.)

8. Eight tons of hay $54.00.

This item appears in the deposition of A. C. Shropshire, (Record, page 68,) and in the deposition of Loretta Shropshire, (Record, p. 75.)

Lyle testified: "As to the eight tons of hay. I never bought a spear of hay from him, at any time."

William Lyle testified: "As to the eight tons of hay, there was no hay on the place when I went there, and we did not have it." (Record, page 92.)

That John Lyle anticipated the necessity of buying hay is evident from his letter of October 7, 1880, in which he says: "If Will comes he will want to buy hogs, hay and corn." (Record, page 77.)

George H. Wilson, upon cross-examination testified:

"I only know this hay was grown on the place, cut on the place, stacked and put in the barn on the place, and that it was put up by Mr. Shropshire. I was at the place a great many times, and put up hay on the shares for both Lyle and Shropshire. This hay was cut and put up by Shropshire before Lyle took possession." (Record, page 135.)

It would indeed be a very strange fact, if upon a large stock farm of 540 acres, upon which a large amount of stock was kept, there should be no hay on the 1st day of January, at a time when, in Iowa, the winter has but just fairly begun. This statement of William Lyle stamps his testimony as unworthy of credit.

9. Sixty-two head of stock hogs, $496, and eight brood sows, $120. These items appear in the testimony of both A. C. Shropshire and Loretta Shropshire. (Record, pages 68 and 75.)

John Lyle testified: "I think that hog item is correct. I had forty-three hogs of him, but he killed two of them afterwards, which should come out." (Record, page 101.) And further: "As to the sixty-two stock hogs and eight brood sows, all of the hogs I ever bought of them or either of them was the forty-three head that I spoke of before, and which are charged for in the forepart of the bill. This item is all wrong. I didn't have them." (Record, page 102.)

A. C. Shropshire testified: "I sold Mr. Lyle sixty-two head of stock hogs, which he denies purchasing, in his deposition, and eight brood sows, and eight tons of hay, and Mr. George Wilson was present, and was renting part of the farm, and knows it to be true." (Record, page 142.)

George H. Wilson testified: "In the first place Mr. Lyle bought thirty brood sows from Mrs. Shropshire, and afterwards about forty head more, making seventy in all. This Mr. Lyle told me himself." (Record, page 134)

10. Breeding four mares, $100.

This item appears in the testimony of both A. C. Shropshire and Loretta Shropshie. (Record, pages 68 and 75.)

John Lyle denies this item. (Record, page 102.)

A. C. Shropshire reasserts it with particulars. (Record, page 142.)

11. Services in buying twenty-six head of cattle $25, keeping the same, $10.

These items appear in the testimony of A. C. Shropshire. (Record, page 68.), and of Loretta Shropshire (Record, page 74).

Mr. Lyle's testimony on these items is found at the bottom of page 101 and top of page 102 of Record.

A. C. Shropshire's further testimony is as follows: "As to the cattle, he denies my buying for him and feeding ten days. I know such is true, and that Mr. S. H. Wright sold part of the stock to me for him, and was at my place and seen the stock there of Lyle's." (Record, page 142.) S. H. Wright's testimony is found upon page 140 of the Record.

Mr. Lyle's denials are everywhere general, whilst A. C. Shropshire's testimony is specific and particular, showing the accuracy of his recollection. Mr. Lyle, at the time of the transaction, was far advanced in years, whilst Mr. Shropshire was in the very prime of life. Lyle was living in the past, and Shropshire in the active present. It is no reflection whatever on Mr. Lyle to say that Shropshire's testimony is entitled to the greater credit. The evidence by a fair preponderance sustains the items which we have above considered, which embrace all found in the master's report, at page 42 of the record. These with interest thereon to the 1st day of January, 1881, when Lyle purchased and took possession of the farm, amount to the sum of $4,894.44, as found by the master.

A small amount of these items grows out of payments made by A. C. Shropshire, individually, but, as he was jointly liable upon the German Savings Bank loan, secured by mortgage upon his homested, and drawing interest at the rate of 10 per cent. per annum, he has a right to have the payments made by him, applied to that loan, such payments being more beneficial to him.

Story's Equity Jurisprudence, Section 459 b, 459 c, 459 d, and 459 e.

These several payments deducted from the individual indebtedness of Loretta Shropshire and the joint indebtedness of A. C. and Loretta Shropshire, leave the amount of $13,792.69 to be applied upon the purchase price of the land, and shows the balance due Mrs. Loretta Shropshire to be $7,807.31, as found by the master.

See report of master. (Record, page 43.)

IX.

As to the items found by the master to constitute the individual indebtedness of A. C. Shropshire.

These items amounting to $5,788.80, are found upon page 31 of the record. The testimony of John Lyle, respecting them, is found at pages 97-100.

A. C. Shropshire testified: "My wife never had any business transactions with Mr. Lyle until in February, 1878, and until then was but slightly acquainted with him. In the papers on file in the case, Mr. Lyle claims a note of $1,000 against my wife, that I suppose is a note of Augustus Shropshire, of Kentucky, on which I am surety. My wife never had anything to do with that note. He also charges her with some stock, at one time $1,420, at another time $400, and some horses, at one time $600, at another time $200, and at another time $700. She did not buy or receive any of this stock. This was a personal transaction between Mr. Lyle and myself, and she had nothing to do with it." (Record, page 67.)

A copy of the note referred to appears upon page 104 of the record. The testimony of Loretta Shropshire is found upon page 73 of the record. The evidence clearly supports the finding of the master as to these matters. As before shown, the individual property of Mrs. Shropshire, is not chargeable with the payment of her husband's debt.

X.

As to the $2,000 note executed by A. C. and Loretta Shropshire, a copy of which appears at page 148 of the record.

In the first deposition of John Lyle, taken May 25, 1885, (record, pages 96-102) he makes no reference whatever to this note. In his second deposition, the only reference which he makes to the notes is as follows: "I don't know of anything else except that note mentioned in my second answer, a copy of which I have here appended."

The other testimony bearing upon the matter is that of A. C. Shropshire, (Record, pages 149 and 150), Loretta Shropshire, (Record, page 153), William H. Cole, (Record, page 155) and Alexander Rheinhart (Record, page 69).

This evidence clearly shows that the note was without consideration, and that Mr. Lyle knew that fact.

XI.

As to the right to a vendor's lien.

The question mainly controverted in the court below was as to the right of the complainants to have a vendor's lien established for the amount found due. This is apparent from the opinion filed in the court below. (Record, page 49)

As has already been shown, the deeds from the complainants and from Jehu Rheinhart to the respondent for the lands in controversy have the effect of mortgages, and the defendant, John Lyle, agreed to purchase the lands and pay therefor the sum of $21,600, of which sum $7,807.31, with interest at 6 per cent. from January 1, 1881, remains unpaid.

These facts, without more, clearly entitle the complainants to a vendor's lien, both at common law and under the statutes of Iowa.

Respondent's Counsel, however, deny the right of the complainants to a vendor's lien, because George Lyle is not a party to the proceeding and because of some rights which they imagine him to have in the property. This claim, of course, makes a brief résume of the facts necessary:

The petition in the case making John Lyle sole defendant was filed in the District Court of Jasper County, in which the lands are situated, on the 26th day of February, 1883. (Record, page 1.)

John Lyle removed the cause to the Circuit Court of the United States upon the ground that he was a citizen of the state of Illinois, and the plaintiff was a citizen of the State of Iowa. (Record, page 11.)

The land was conveyed to George Lyle on the first day of March, 1883, three days after the commencement of the suit. (Record, page 89.)

He took possession of it on March 2, 1883, and continued in possession down to the time of the trial. (Record, page 88.) See also demurrer of defendant, (Record, page 32,) 4th point of demurrer.

George Lyle, being a citizen of the same state with complainant, could not have been made a party to the controversy without ousting the jurisdiction of the Federal Court.

There seems to be at least a *grain* of inconsistency in the course of respondents who, having obtained a removal of the cause to the Federal Court, on the ground that the plaintiff and the defendant were citizens of different states, now claim that a party should have been made defendant, the effect of whose appearance in the controversy would have been to oust the jurisdiction which they had invoked, and probably to dismiss the case.

The Code of Iowa provides: "When a petition has been filed affecting real estate, the action is pending so as to charge third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's title, if the real estate affected be situated in the county where the petition is filed." (Code, section 2628, McClain's Annotated Code, section 3834.)

The filing of a petition creates a *lis pendens*, although no notice of the suit has been given. (Haverly vs Alcott, 57 Iowa, 171.)

A purchaser *pendente lite* needs not be made a party to the suit.—

(Story's Equity Pleadings, sections 155, 194, 2351; Jackson vs. Railway Co., 69 Iowa, 292, and cases cited.)

It was claimed, however, in the court below, that George Lyle in fact bought the land, and paid the entire consideration therefor before this action was commenced. This claim is based upon certain statements in the deposition of George Lyle, but is wholly unsupported by the testimony. George Lyle, in his deposition taken on behalf of the respondent, in his cross-examination stated: "I took possession of the land involved in this suit, March 2, 1883, but I bargained for the farm in December, 1882." (Record, page 130.) Thereupon the complainants, for the purpose of more fully ascertaining the facts connected with this purchase, took the deposition of George Lyle, and in that deposition he testified as follows: "I contracted with John Lyle for the purchase of said farm about December 1, 1882, in Kewanee, Illinois. The contract was verbal. The contract price was twenty-two thousand dollars. I paid it all cash. I traded six hundred and forty acres of land in Union County, Iowa, at thirty dollars per acre, and three thousand eight hundred dollars in cash. The first payment of three thousand, eight hundred dollars was made about December 1, 1882, and the balance was made and transfer made about the last of December, 1882. I gave no notes for the land. I gave a note of $1,600 for horses, cattle, &c., the stock on the place on December 1, 1882. I have a deed for the said land and hand the notary a true copy thereof." (Record, pages 88 & 89.)

The copy of the deed to George Lyle attached, bears date March 1, 1883. (Record, pages 89 and 90.)

In this posture of the testimony, it was deemed advisable by complainant to take the testimony of John Lyle himself. He testified as follows: "I conveyed the premises in controversy in this action, to one George Lyle, my grandson. * * * * The contract for the sale of the premises in controversy in this action, was made in Kewanee, Illinois. No one was present but my wife and him. The contract was not in writing. I cannot give the date, but know that George was over twenty-one at that time. I do not know the amount of his means. He was on a farm in Union County, half a section, and he had considerable stock and several thousand dollars in notes. * * * He got nine or ten hundred dollars from his father's and mother's estate which I handled till after he came of age. I gave him this half section in Union County, Iowa, in full settlement of all I held. This half section in Union County was part of the consideration and was to be deeded as I might direct. He also turned to me about four thousand dollars worth of sale notes, for stock and other things, that he had sold, and gave me his note for six thousand dollars. This note he has since paid. George Lyle did pay me in part for the lands in controversy by land in Union County. The deed was made September 20th, 1883, to Esther Lyle, my wife, by my request. The deed conveys the south-east quarter of section sixteen and the north-east quarter of section twenty-one, north range twenty-nine, west of the fifth principal meridian. There was no agreed price by the acre, but the place was to be eight thousand dollars. The deed was not made at the time of the trade, as I didn't know who I might sell it to. I afterward sold it to a man by the name of Wright, and had George deed to my wife, and she made the contract with Wright. I attach a copy of the deed to the deposition. (Record, pages 155 and 156.)

The testimony of George Lyle and John Lyle, the sole parties to this negotiation, is thus hopelessly in conflict. George Lyle testified that he conveyed six hundred and forty acres of land in Union County, at $30.00 per acre, turned over sale notes amounting to about $3,800, and executed no note. John Lyle testified that he conveyed 320 acres of land in Union County at the agreed price of $8,000, turned over sale notes amounting to about $4,000, and executed his note for $6,000, which he has since paid. The deed from John Lyle to George Lyle bears date, March 1, 1883, and is for the expressed consideration of $22,000. (Record, page 89) The deed for the Union County lands conveys three hundred and twenty acres of land, is for the expressed consideration of $8,000, and bears date September 20, 1883. (Record, page 157.)

If it should be conceded that George Lyle gave his note for $6,000, and paid the same before this action was commenced, and that he turned over sale notes amounting to $4,000, still there remained unpaid on the purchase price of the land, at the time this action was commenced, $12,000.00.

In any possible view of the case, there was more than enough of the purchase price of the land to satisfy complainants' claim, unpaid when the bill in this case was filed. The filing of this bill affected George Lyle with constructive notice of the rights of complainant, and payments since made by him were made in his own wrong and cannot prejudice the complainant.

In Craft vs. Russell, 67 Ala. 9, it is said:

"The decisions of this court have been uniform in holding that the vendor of lands in the absence of an agreement, express or implied to the contrary, retains a lien on the lands sold and conveyed for the unpaid purchase money which shall prevail in the subvendor who purchased without notice of the original vendor's equity."

Foster vs. Atheneum 3 Ala. 302;

Buford vs. McCormick 57 Ala. 438.

And when a bill is filed to enforce such a lien, a plea put in by a defendant claiming to be a *bona fide* purchaser for value without notice, in order to be available as a protection against a prior conveyance asserted by the complainant, must aver clearly, distinctly and without equivocation the following facts:

1. That he is a purchaser of the legal as distinguishable from the equitable title; 2. That he purchased the same in good faith; 3. That he parted with value as a consideration therefor by paying money or other thing of value, assuming a liability or incurring an injury; 4. That he had no notice, and knew no fact sufficient to put him on inquiry as to the complainant's equity, either at the time of his purchase or at, or before, the time he paid the purchase money, or otherwise parted with such value."

This case cites numerous authorities which support the doctrine of the opinion.

In Buford vs. McCormick, 57 Ala. 430, it is said:

"In Wells vs. Morrow, 38 Ala. 128, speaking of the defense of *bona fide* purchaser without notice, we said: 'There is no averment in the answer that Mr. Morrow had paid the purchase money for the land; and hence his defense of purchaser without notice must fail on that account. * * * * * The averment must be, not only that the purchaser had not notice at or before the date of the execution of the deeds, but that the purchase money was paid before notice. There must not only be a denial of notice before the purchase, but a denial of notice before the payment of money.' To the same effect is Moore vs. Clay, 7 Ala. 742: See Story's Eq. Juris. sec. 1502: Mitf. Ch. Pl. (Marg. p.) 275.

In Story's Eq. Pl,. Sec. 805, it is said: "The plea must aver 'the consideration for, and actual payment of it; a consideration secured to be paid is not sufficient.' We have found no authority in conflict with this."

In Rawles vs. Perkey, 50 Texas 315, it is said:

"How far a subsequent purchaser who has bought in good faith without notice of any prior lien, but receives such notice before full payment of purchase money, should be protected in equity, has been a subject of much consideration and difference of opinion by the courts. The English doctrine requires that a subsequent purchaser, to be protected against the prior lien, must not only have contracted without notice of the incumbrance, but that the conveyance should have been actually made, and all purchase money paid before such notice. This seemingly 'harsh and inequitable' doctrine has been qualified by some of the American courts, and the purchaser who has paid part of the purchase money is protected *pro tanto*. In some cases it has been held that the equity arising from part payment would entitle the purchaser to the land itself, subject to a lien for the part unpaid in favor of the holder of the prior equity. (White & T's Lead. Cas. in Eq., Vol. 2, part 1, notes to Barrett vs. Nosworthy; Dufphey vs. Frenaye, 5 Stew. & Port. 215; Story's Eq. Juris. Sec. 64 a.) The rule is thus laid down by Chancellor Kent in Frost vs. Beekman, 1 Johns. Ch. R. 301: 'It is an established rule in equity to give no assistance against a purchaser for a valuable consideration without notice. (Wallwyn vs. Lee 9 Ves. Jr. p. 24.) He has equal claims upon the equity of the court. But whenever actual notice of the true sum in the mortgage can be brought home to the purchaser, he is from that time, so far as the former purchase is left incomplete, either as to the deed on the one hand or as to the payment on the other, bound by the prior equitable lien, and all subsequent payments by him are made in his own wrong so far as the rights of the mortgagee are concerned. That such purchaser should be protected for the amount actually paid before notice of the prior incumbrance, is more in accordance, we think, with the liberal principles of true equity than the English rule. We are further of the opinion that in justice to the first vendor in a case like the one now before the court, where the amount unpaid by the subsequent purchaser is secured by the vendor's lien, the lands in the hands of this subsequent purchaser should upon notice stand charged to the extent of the purchase money still unpaid by him for the benefit of the party holding the antecedent lien."

In Hutchins vs. Chapman, 37 Texas 612 (615) it is said:

"We believe that the authorities are without conflict in holding that in order to constitute an innocent purchaser, such as courts of equity would protect against prior liens, the consideration must have been paid at the time of the execution of the deed or before notice of any prior rights or equities. (Frain vs. Frederick, 32 Texas 39: Story's Eq. Juris. 64, 108, 154; Lead. Cas. in Eq. Vol. 2, p. 79.)

Had appellant, however, purchased the land absolutely and paid the purchase money. yet he is not entitled to protection from a court of equity against the deed of appellee. He purchased after a suit to foreclose the vendor's lien had been pending in the District Court of the county where the land lies, for over five years, and the pendency of that suit was at least constructive notice to all persons, and he must be held estopped from claiming the benefits of an innocent purchaser without notice."

See also Kittredge vs. Chapman 36 Iowa 348 and cases cited. Section 1940 of the Code (McClain's Annotated Code, § 3111) provides: "No vendor's lien for unpaid purchase money shall be recognized or enforced in any court of law or equity after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage or other instrument duly acknowledged and recorded or unless such conveyance by the vendee is made after suit brought by the vendor, his executor or assigns to enforce such lien."

In this case the conveyance was made by the vendee after suit brought and hence the case falls within the exception recognized in the section. In Noyes vs Kram 54 Iowa 22, it was held that. the execution by the vendee of a contract for the sale of the land is not a conveyance such as will defeat the lien of the vendor for purchase money, under Section 1940 of the Code.

It seems quite clear from the preceding authorities and the evidence in the case that the complainants are entitled to a vendor's lien against John Lyle and against all persons claiming under him since the 26th day of February, 1883, the date of filing the petition in this cause. We do not insist that any rights claimed by George Lyle antedating the filing of the bill of complaint in this cause can be affected by this decree. No such rights can be passed upon or determined in this case. They can only be set up and determined in an action in which George Lyle may be made a partyand in a court which can acquire jurisdiction over him, which this court cannot do. Whilst George Lyle would have been a proper party to this proceeding if the court could have obtained jurisdiction over him, he is in no sense such a necessary party that no decree establishing a vendor's lien can be entered without his presence. That the cause may proceed without the presence of George Lyle see equity, rule No.47. We insist that we are clearly entitled to a vendor's lien.

XII.

As to the jurisdiction of equity for taking an account.

If, however, by any chance, which we cannot deem possible, it should be determined that Mrs. Shropshire is not entitled to a vendor's lien, still under the allegations of the last amendment to the bill, equity will retain jurisdiction of the cause for the purpose of taking an account and rendering a decree for the balance due. The allegations of the amendment to the bill, and the proofs taken clearly disclose such a case for accounting as is properly within the jurisdiction of a court of equity. (See Story's Equity Jurisprudence, sections 442 et seq.; Burt vs. Harrah, 65 Iowa 643; May vs. LeClaire, 11 Wall. 217, (236). In the case of May vs. LeClaire, *supra*, which was an action for specific performance, counsel for respondents contended that the bill was defective for want of proper parties defendent, that specific performance was impracticable and that if compensation in money was asked the case became a claim for damages and one at law and not in equity. (See page 227.) The court held that specific performance could not be granted because of a defect of parties, and at the same time retained the cause, took an account of the amount due the plaintiff, and decreed its payment. The case is in all respects an authority for our position that jurisdiction should be retained and a decree entered even if a vendor's lien *should not be enforced*.

Respectfully submitted.
WILLIAM PHILLIPS,
JAMES G. DAY,
Solicitors for Appellees.

ADDITIONAL BRIEF.

I.

The foregoing argument, of necessity, was prepared and placed in the printer's hands without an opportunity to examine the argument of appellant, which we did not see until the night of October 31, 1892. Most of the positions of appellant have been anticipated and met in the preceding argument. In the court below, however, the contention of appellant, that a vendor's lien could not be established and enforced, was based solely upon the ground that George Lyle was not made a party to the proceeding. In the argument in this court, for the first time, the general doctrine of the existence of an equitable lien for unpaid purchase money is assailed. Nearly every case, however, which the appellant cites is one in which such lien was recognized, and in most of them enforced. The quotations from the opinions announced, found in appellant's argument, are not taken from points decided, but are made up sentences disconnected from their associations, employed *arguendo* by the judges who prepared the opinions, and have the force only of *dicta*.

It is conceded, however, that the federal courts recognize and enforce vendor's liens, when they are recognized and enforced as a part of the jurisprudence of the state in which the question arises.

The existence of the equitable lien of a vendor for unpaid purchase money has been recognized in the following cases in the supreme court of Iowa:

Pierson vs. Davis, 1 Iowa, 23.
Blair & Co. vs. Marsh, 8 Iowa, 144.
Baldwin vs. Thompson, 15 Iowa, 504.
McDole vs. Purdy, 23 Iowa, 277.
Johnson vs. McGrew, 42 Iowa, 555.
Jordan vs. Wemir, 44 Iowa, 65.
Noyes vs. Kramer, 54 Iowa, 22.
Brown vs. Byam, 65 Iowa, 374.
Huff vs. Olmstead, 67 Iowa, 598.
Devin vs. Eggleston, 79 Iowa, 269.

It is true that some of these decisions were announced before the adoption of section 1940 of the code (McClain's Code, section 3111). But the effect of the section is simply to deny the existence of the implied lien, when the vendee conveys the property before suit brought by the vendor to enforce his lien.

II.

Appellant cites some cases in support of the proposition that the remedy at law must first be exhausted, or shown not to exist, before a bill in equity can be filed to enforce the lien. This is a question upon which courts are not agreed. In Jones on Liens, section 1100, it is said that in several states "the vendee may enforce his lien in "the first instance, without having taken any steps to collect the debt "at law."

In support of this proposition, the author cites the following authorities, which fully sustain it:

High vs. Bath, 10 Yerg. (Tenn.), 186.
Pratt vs. Clark, 57 Mo., 189.
Richardson vs. Baker, 5 J. J. Marsh (Ky.), 323.
Bradley vs. Bosby, 1 Barb. Ch. (N. Y.), 125.
Owen vs. Moore, 14 Ala., 640.
Campbell vs. Roach, 45 Ala., 667.
Vail vs. Drexel, 9 Bradwell (Ill.), 439.
Mayers vs. Hendry, 33 Ark., 240.

The rule contended for has never prevailed in Iowa, and it was suggested by the appellant for the first time in his argument in this case. Upon this question this court follows the construction recognized by the courts of the state in which the lien is claimed.

See—

Cordova vs. Hood, 17 Wal., 1 (9).

It appears fully in this case that the defendant in the court below was a non-resident of the state of Iowa. This, of itself, would furnish a sufficient reason, if any was required, for proceeding in equity to establish the vendor's lien.

See—

Richardson vs. Baker, 5 J. J. Marsh (Ky.), 323.

III.

Appellant cites numerous authorities to support the proposition that an estate of the husband by curtesy may be sold by him or on execution. We have not deemed it necessary to examine these cases. There is no such thing in Iowa as an estate by curtesy. Code, sec. 2440; McClain's Code, sec. 3644.

The statute of Iowa provides:

> When property is owned by either the husband or wife, the other has no interest therein which can be made the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife, who is not the owner of the property, except as provided in this chapter.

Code, sec. 2203.
McClain's Annotated Code, sec. 3394.

The only provision in the chapter for liability is that the property of both husband and wife, or either of them, shall be chargeable with the expenses of the family and the education of the children.

Code, sec. 2214.
McClain's Code, sec. 3405.

These provisions of the statute fully dispose of this position of appellant's agreement.

IV.

The authorities cited by appellant in the third division of his argument to establish a waiver of the lien, do not support his position. Many of them are very strong cases in support of the position of appellee. Notably so are the following:

Cordova vs. Hood, 17 Wallace, 1.
Note to Lagow vs. Badollet, 12 Am. Dec., 263.
Manly vs. Slosson, 21 Vt., 271.
Gilman vs. Brown, 1 Mason, 190, 212.
McKeth vs. Simmons, 15 Vesey, 329.
Bayley vs. Greenleaf, 7 Wheaton, 46.

In the case of *Manly vs. Slosson, Supra*, upon pages 275 and 276, the following instructive and pertinent language is employed by that eminent jurist, Justice Redfield.

> It is undoubtedly true, that in order to have a special contract amount to a wavier of a lien, it must be to some extent, *inconsistent with the continued existence of such lien*, and thus show a virtual understanding between the parties, that the lien shall be waived. We should not be prepared to say, that this lien depended upon the contract, or the probable expectation of the parties in the outset. For if that rule was adopted there would remain few cases to which the rule would apply. As said by Walworth Ch., in *Fish vs. Howland*, 1 Paige, 20. For if the vendor supposed there would be any necessity to resort to such lien, he would ordinarily take a formal mortgage. And it is, no doubt, true, that many of our citizens are wholly uninformed of any such lien. And the same is no doubt true of many other rights; which nevertheless exist, by way of lien—as the right to refuse to deliver goods sold, until the price is paid, and the right to stop them in *transitu*.
>
> The doctrine of lien does not depend at all upon any supposed express contract of the parties, or upon any implied understanding unless it is in regard to the *wavier* of such liens, but upon custom, usage and general law. And when it exists, it is not essential that it should have been in the contemplation of the parties: for if so, each case must be decided upon its own circumstances, and the right of a taverner, or manufacturer to the security of a lien, would depend upon his knowledge of the law and his want of confidence in his customers.

The whole case is a most masterful refutation of the positions of appellant, in support of which it has been cited.

All the other points made by appellant, are, we think, sufficiently anticipated and met, by the principal argument.

The case is respectfully submitted.

WM. PHILLIPS,
JAMES G. DAY,
Solicitors for Complainants and Appellee.

JOINER IN ERROR.

SUPREME COURT OF THE UNITED STATES.

JOHN FISHER AND WILLIAM LYLE, Executors Estate of John Lyle, et. al., *Respondents and Appellants*,

vs.

LORETTA AND A. C. SHROPSHIRE, *Complainants and Appellees.*

And now the said Loretta Shropshire and A. C. Shropshire, by William Phillips and James G. Day, their solicitors, come here freely into court, and say that there is no error, either in the record and proceedings in this cause, or in the entering of the decree therein rendered, and they pray that said supreme court may proceed to examine, as well, the record and proceedings aforesaid, as the matters aforesaid assigned as error, and that the decree aforesaid, may in all things be affirmed.

WILLIAM PHILLIPS,
JAMES G. DAY,
Solicitors for Defendants in Error.

Office Supreme Court U. S.
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NOV 14 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

TERM No. 54.

JOHN FISHER AND WILLIAM LYLE, EXECUTORS ESTATE OF JOHN LYLE, ET AL., RESPONDENTS AND APPELLANTS,

vs.

LORETTA AND A. C. SHROPSHIRE, COMPLAINANTS AND APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION.

FURTHER BRIEF OF

WILLIAM PHILLIPS.
JAMES G. DAY.

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WILLIAM PHILLIPS.
JAMES G. DAY.

FURTHER BRIEF FOR COMPLAINANTS AND APPELLEES.

As stated in our additional brief, we did not see appellant's argument until the night of October 31, 1892.

Supposing that the case would be reached for hearing very early in November, we quite hurriedly prepared and caused to be printed, and forwarded to this court with our argument an additional brief. Now that the case is not likely to be reached as soon as was then supposed, we beg leave to submit, for the convenience and assistance of the court, a few additional references to the record, and citations of authorities.

I.

That a vendor's lien is recognized in and enforced by the Supreme Court of the United States, see—

Thredgill vs. Goodloe, 12 How., 24.
Chiltons vs. Braiden's, Admr., 2 Black, 458.

II.

Upon the general doctrine of vendor's lien, and the circumstances under which it will be allowed, see—

White vs. Street, 2 S. W. Rep., 529.
Stevens vs. Flanagan, 30 N. E., 898.
Chapman vs. Chapman, 18 S. W. Rep., 1037.
Gee vs. McMillin, 12 Pac. Rep., 417.

III.

As to the construction and effect of section 2628, Code of Iowa; McClain's Annotated Code, section 3834, see—

Tredway vs. McDonald, 51 Iowa, 668.
O'Brien vs. Putney, 55 Iowa, 292.
Haverly vs. Alcott, 57 Iowa, 171.

IV.

The suit was brought, as contemplated in section 1940, Code of Iowa; McClain's Annotated Code, section 3111, when the petition was filed.

The cases of *Reed vs. Chubb*, 9 Iowa, 178, and *Hagar vs. Birch*, 8 Iowa, 309, cited by appellant do not favor his position.

The doctrine of *Elliott vs. Stevens*, 10 Iowa, 418, and *Proska vs. McCormack*, 56 Iowa, 318, is applicable only to actions *in personam*, and has no application to actions *in rem*, where notice was given by publication, as in this case.

Collins vs. Bane, 34 Iowa, 385, arose under the statute of limitations.

V.

The statement made by appellant in the fourth division of argument, page 28, that the evidence shows that George Lyle "purchased the land of John Lyle and paid full value therefor before "this suit was brought," is not borne out by the record. Appellant cites only the testimony of George Lyle. We call the attention of the court to the deed from John Lyle to George Lyle. (Record pp. 89-90; test. of John Lyle, Record pp. 155-156; deed George Lyle to John Lyle, Record p. 157.)

VI.

The statement in appellant's argument, at page 36, that "it is very "clear that John Lyle would not have advanced this money, nor furnished this stock to go upon the farm, had he not thoroughly believed that he held the farm as security for every dollar that he "advanced" is altogether unsupported by the record.

John Lyle became acquainted with A. C. Shropshire long before his marriage to Loretta. He then loaned him money and went his security for the purchase of property. (Record p. 96.)

A relation of Alexander C. Shropshire had married a member of Lyle's family, and A. C. Shropshire was reputed to be wealthy. (Lyle's answer, Record p. 16.)

The following items of Lyle's account against A. C. Shropshire, arose before the transaction between Mrs. Shropshire and Lyle, in which the deeds were executed:

Cattle sold in spring of 1878	$ 1,420.00
Interest	227.00
One horse, Bourbon	600.00
Interest	96.00
Two hogs	50.00
Note, A. C. and Gus Shropshire	1,000.00
Interest	327.00
	$ 3,720.00

(See Master's Report, Record, p. 41; test. of Lyle, p. 97).

It is not possible that at the time of making these advancements, Lyle relied upon the security of the farm.

VII.

There is no item in the master's report of $50.00 expenses to Fort Dodge, as claimed in appellant's argument, page 39. That item is $10.50. (See master's Report p. 42.)

VIII.

The master did not err in rejecting respondents claim for taxes as claimed in appellant's argument page 39. This claim is for taxes of 1879, 1880 and 1881. (Lyle's test. p. 100). The master allowed the taxes for 1879 and 1880. (Master's Report Record, p. 40.)

The taxes for 1881 accrued after Lyle's purchase of the farm, and were properly chargeable to him.

IX.

Upon page 45 of his argument, appellant says:

> The master indulges in the most unheard of equities, in that he should have come to the conclusion that where the parties were dealing upon the faith of the security in the hands of John Lyle, that it should suddenly dawn on the master that Lyle waived his rights under the mortgages, which he had in his power to forclose, and voluntarily consented that $6,000 of his advances should be considered as the debt of a person wholly unable to pay.

We can not say that it is wholly unheard of that anyone should claim that the German Savings Bank mortgage, and the quit claim deeds intended as securities could be foreclosed for more than the amounts for the security of which they were given, for appellants' counsel have been heard to make that claim in this case.

The fact, however, nevertheless exists that the German Savings Bank mortgage could have been foreclosed only for the sum of $10,000 and interest, and the trust deeds for the sum of $4,250, and interest.

X.

The finding of a master is *prima facie* correct, and the burden of sustaining an exception thereto is upon the objecting party.

Medsker vs. Bonebake, 108 U. S., 66.

XI.

The exceptions to the master's report are not sufficiently specific.

Harding vs. Hardy, 11 Wheat, 103 (127).
Story vs. Livingston, 13 Peters, 364.

WILLIAM PHILLIPS,
JAMES G. DAY,
Solicitors for Appellees.

Transcripts
of
Records

1892

826

859

Supreme Court U. States

147 U. S.

1 — 133

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